

**ZB# 92-8**

**Charles DiGisco**

**39-5-1**

Prelim:

Mar. 23, 1992

~~As furnished~~  
~~at meeting~~

New data needed  
on addl. items  
on 48-14(A)(1)(c) &  
48-21 G(4).

Board requested  
updated survey.  
Need amended notice  
of denial before  
sched. of 2nd Prelim.

Prelim. 2nd

April 27, 1992

- ① Photos here &
- ② Read it
- ③ Title Policy &
- ④ Check (here) it

Motion to sched.  
P.H.

Notice to Sentinal  
on 6/16/92

Public Hearing  
July 13, 1992

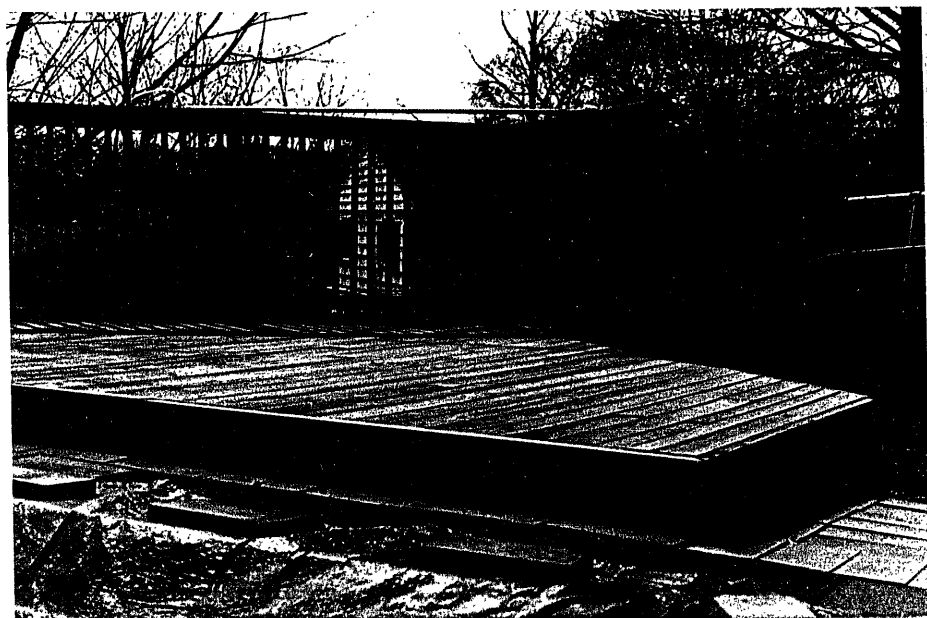
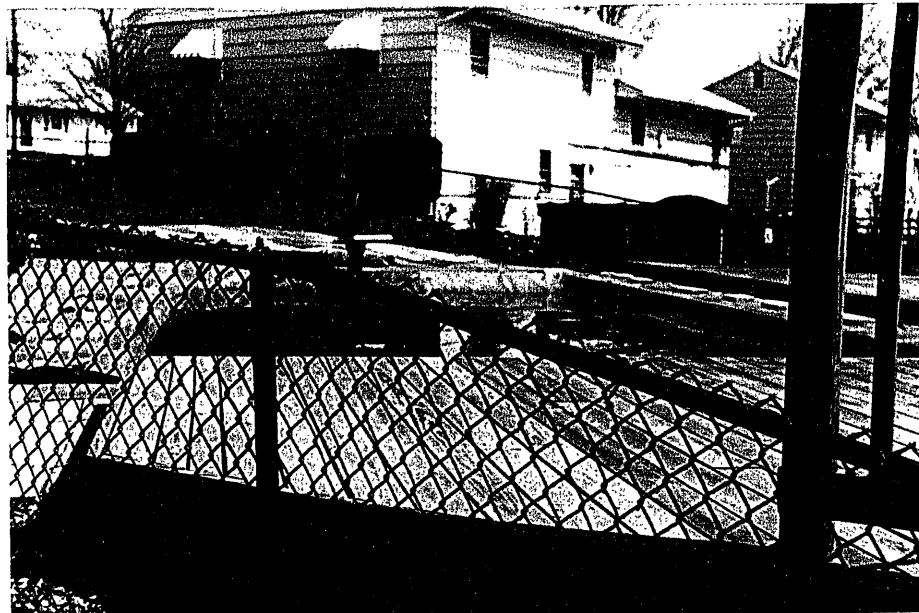
Area Variance  
Granted.

Do. F.D.:

Attys. Time

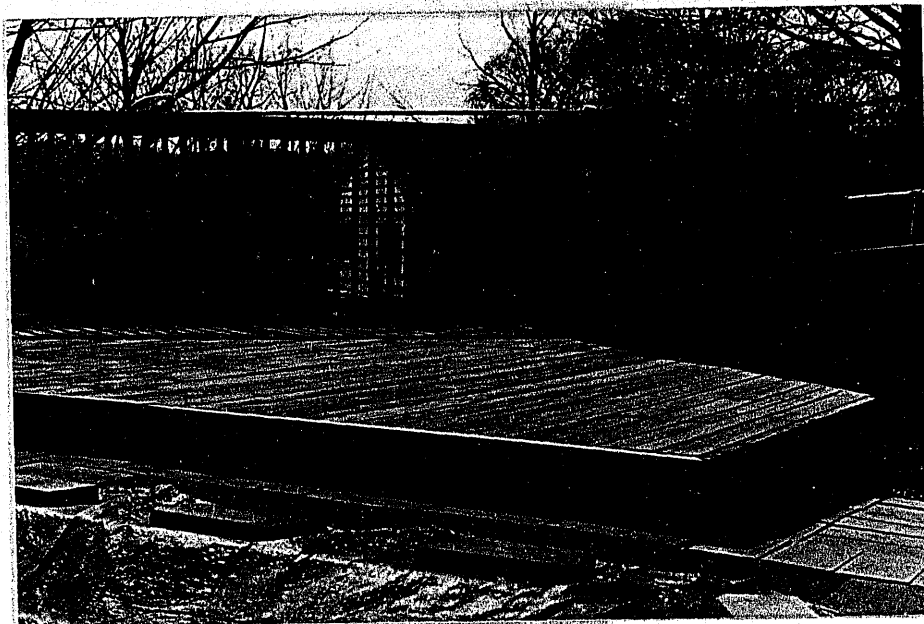
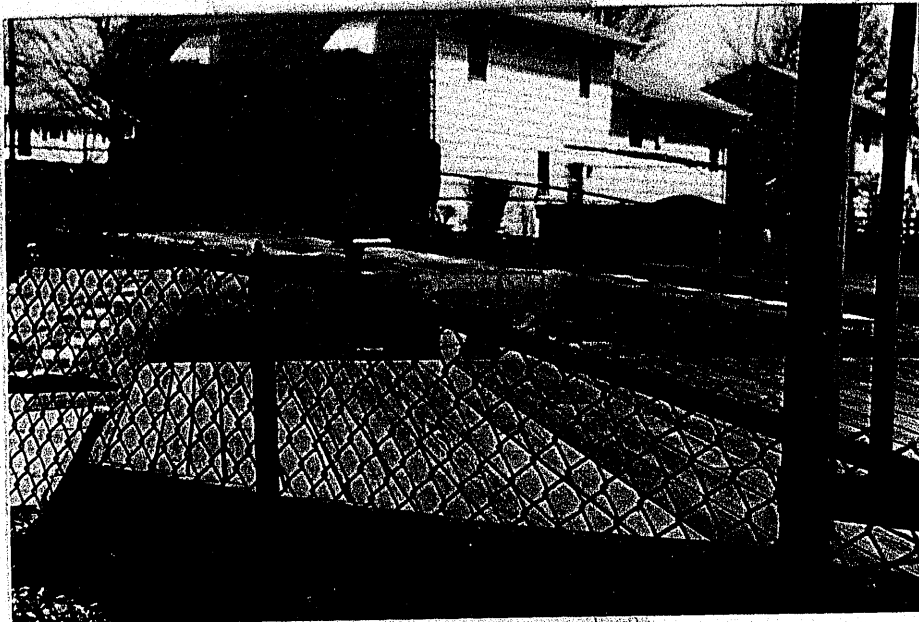
\$ 387.50 Due  
Paid ck# 159

# 92-8 - DiGisco, Charles - area



20492 - Morse, Dick (HAC)

11-92 - McEwen, Richard



TOWN OF NEW WINDSOR  
555 Union Avenue  
New Windsor, NY 12550

## GENERAL RECEIPT

12775

July 21, 1992

Received of Charles Digioia

\$ 50<sup>00</sup>/<sub>100</sub>

Fifty and <sup>00</sup>/<sub>100</sub>

DOLLARS

For Variance fee (#92-8)

DISTRIBUTION:

FUND	CODE	AMOUNT
<u>Clack # 1421</u>		<u>\$50<sup>00</sup>/<sub>100</sub></u>

By

Pauline B. Townsend

Town Clerk

Title

[illegible]

CELESTE MUZIO DIGISCO  
CHARLES R. DIGISCO  
1 BIRCHWOOD DR.  
NEW WINDSOR, NY 12550

1421

1-108/280

PAY TO THE  
ORDER OF

*Town of New Windsor*

\$ *50.00* <sup>x4</sup>/<sub>100</sub>



VAILS GATE OFFICE  
MARINE MIDLAND BANK, N.A.  
ROUTE 94 & TEMPLE HILL ROAD  
VAILS GATE, NY 12584

FOR

*Blog Permits #92-8*

*Charles Digisco*

⑆028001081⑆078755539⑆ 1421

© HARLAND 1980

CELESTE MUZIO DIGISCO  
CHARLES R. DIGISCO  
1 BIRCHWOOD DR.  
NEW WINDSOR, NY 12550

1420

1-108/280

PAY TO THE  
ORDER OF

*Town of New Windsor*

\$ *250.00* <sup>x4</sup>/<sub>100</sub>

*Two hundred and fifty*

<sup>x4</sup>/<sub>100</sub> DOLLARS



VAILS GATE OFFICE  
MARINE MIDLAND BANK, N.A.  
ROUTE 94 & TEMPLE HILL ROAD  
VAILS GATE, NY 12584

FOR

*Consulting fee 92-8*

*Charles Digisco*

⑆028001081⑆078755539⑆ 1420

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APPLICATION FEE (DUE AT TIME OF FILING OF APPLICATION)

APPLICANT: DiGisco, Charles

FILE # 92-8

RESIDENTIAL: \$50.00

COMMERCIAL: \$150.00

APPLICATION FOR VARIANCE FEE . . . . . \$ 50.00 paid 4/27/92

\* \* \* \* \*

ESCROW DEPOSIT FOR CONSULTANT FEES . . . . . \$ 250.00 paid 4/27/92

DISBURSEMENTS -

STENOGRAPHER CHARGES:

PRELIMINARY MEETING - PER PAGE 3/23/92 - 12 pages . \$ 54.00  
2ND PRELIM. MEETING - PER PAGE 4/27/92 - 8 pages . \$ 36.00  
3RD PRELIM. MEETING - PER PAGE . \$ .  
PUBLIC HEARING - PER PAGE 4/13/92 - 22:50 (\$) . \$ 22.50  
TOTAL . . . . . \$ 112.50

ATTORNEY'S FEES:

PRELIM. MEETING- .3 HRS. . . . . \$ .  
2ND PRELIM. .5 HRS. . . . . \$ .  
~~3RD PRELIM. Puttler~~ .7 HRS. . . . . \$ .  
FORMAL DECISION 2.0 HRS. . . . . \$ .  
TOTAL HRS. 3.5 @ \$ 150 PER HR. \$ 525.00  
TOTAL . . . . . \$ 525.00

MISC. CHARGES:

\_\_\_\_\_. . . . . \$ .  
TOTAL . . . . . \$ 637.50

LESS ESCROW DEPOSIT . . . \$ 250.00  
(ADDL. CHARGES DUE) . . . \$ 387.50 - Due  
REFUND TO APPLICANT DUE . \$ .

*Paid  
ck. #  
8/20/92. 1559*

NEW WINDSOR ZONING BOARD OF APPEALS

-----X  
In the Matter of the Application of  
CHARLES DI GISCO and CELESTE DI GISCO

DECISION GRANTING  
AREA VARIANCE

#91-8.  
-----X

WHEREAS, CHARLES DI GISCO and CELESTE DI GISCO, 1 Birchwood Drive, New Windsor, New York 12553, have made application before the Zoning Board of Appeals for (1) a 3 ft. rear yard variance for an existing pool located closer than 10 ft. to a property line as required by Section 48-21(G)(1); (2) a 7 ft. side yard variance for an existing deck which is not set back 10 ft. from a lot line as required by Section 48-14(A)(1)(b); (3) a 7 ft. 6 in. rear yard variance for an existing deck which is not set back 10 ft. from a lot line as required by Section 48-14(A)(1)(b); (4) 486 s.f. variance for an existing deck which occupies more than 10% of the required rear or side yard as required by Section 48-14(A)(1)(c); and (5) 392 s.f. variance for an existing pool which occupies more than 35% of the balance of the rear yard area, after deducting the area of other accessory buildings (the existing deck) as required by Section 48-21(G)(4), in order for applicant to obtain a Certificate of Compliance for the structures existing at the above address in an R-4 zone; and

WHEREAS, a public hearing was held on the 13th day of July, 1992 before the Zoning Board of Appeals at the Town Hall, New Windsor, New York; and

WHEREAS, applicant, CHARLES DI GISCO, appeared in behalf of himself and spoke in support of the application; and

WHEREAS, there were no spectators present at the public hearing; and

WHEREAS, the application was unopposed; and

WHEREAS, the Zoning Board of Appeals of the Town of New Windsor makes the following findings in this matter:

1. The notice of public hearing was duly sent to residents and businesses as prescribed by law and published in The Sentinel, also as required by law.

2. The evidence shows that applicant is seeking permission to vary the provisions of the bulk regulations pertaining to rear yard, side yard and developmental lot area coverage in order to obtain a Certificate of Compliance for the existing pool and deck at applicant's residence located in an R-4 zone.

3. The evidence presented by applicant substantiated the fact that a variance for less than the allowable rear yard, side yard and developmental lot area coverage would be required in



order to allow applicant to receive a Certificate of Compliance for the existing structures which otherwise would conform to the bulk regulations in the R-4 zone.

4. The evidence presented on behalf of the applicant indicated that applicant would suffer significant economic injury from the strict application of the bulk regulations concerning rear yard, side yard and developmental lot area coverage because the applicant purchased this property believing all improvements thereon to be permitted by the applicable zoning, and therefore paid a price in 1988 for the property which reflected this assumption.

5. The evidence presented by the applicant further indicated that the house itself was built in 1962, prior to the adoption of the Zoning Local Law with only a 12 ft. rear yard, which is pre-existing non-conforming. An owner of the property in 1969 applied for a building permit to install a pool. A hand-drawn sketch submitted therewith indicated that the pool was some 20 ft. from the rear property line (a patent error which was unnoticed at the time). No Certificate of Occupancy for the pool was ever applied for or issued thereafter. A small deck or patio also was added around the pool and there is no record of a Building Permit or C.O. ever issued therefor. All these improvements were on the premises and were assumed to be legal by the applicant when he purchased the premises in 1988. After purchasing the premises, the applicant proceeded to enlarge the deck to some 800 s.f. unaware that the existing structure violated various bulk requirements and needed variances, and that applicant's enlarged deck only made the noncompliance worse, and also unaware that a Building Permit was required for such construction, the applicant believed that he could build anything as long as it was located within his property boundaries.

6. The applicant stated that the property of adjacent neighbors also have structures - a pool and a metal building - located close to the property line.

7. The applicant also indicated that the property of many of his neighbors is improved by patios and decks.

8. Applicant presented photographs which depicted the rear portion of his property with a slope which rendered that portion of the parcel unusable unless a deck of the type which applicant built was constructed over the slope.

9. This Board has considered the alternatives available to the applicant other than the variance procedure and finds that as a matter of economics, applicant would be hard pressed to either remove the deck or pool, or, in the alternative, reduce the size of the pool and deck without sustaining a substantial monetary loss. Applicant also feels that a reduced size deck and pool would diminish the value of his property.

10. It is the finding of this Board that the applicant has made a sufficient showing of practical difficulty, entitling him to the requested area variances.

11. The requested variance will not produce an undesirable change in the character of the neighborhood or create a detriment to nearby properties.

12. There is no other feasible method available to applicant which can produce the benefit sought other than the variance procedure.

13. The requested variances are substantial in relation to the bulk regulations for rear yard, side yard and developmental lot area coverage, given the layout of the lot and the improvements thereon. However, it is the finding of this Board that a number of extenuating circumstances warrant the granting of the requested area variances, namely the undersize rear yard was first created prior to zoning and thus is a pre-existing, non-conforming condition; and obviously any further development in that rear yard can only worsen the degree of non-compliance. In this instance, although the variances sought are substantial, they appear to permit construction which seems to be the norm in this neighborhood with structures located close to the property lines. Additionally, the severe slope to the rear of the subject property limits its utility and the variances sought allow reasonable development thereof without adversely affecting the public health, safety and welfare.

14. The requested variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or zoning district.

15. The difficulty the applicant faces in conforming to the bulk regulations is partially self-created since the applicant substantially enlarged the pre-existing patio or deck without first seeking the required Building Permit. However, the pool and patio or deck which pre-existed applicant's purchase of the lot also failed to comply with the applicable bulk regulations so the applicant's actions merely aggravated the degree of noncompliance. To his credit the applicant has diligently sought to rectify all the building and zoning code violations on the property, whether they were inherited by him from previous owners or were of his own making.

16. It is the finding of this Board that the benefit to the applicant, if the requested area variances are granted, outweigh the detriment to the health, safety and welfare of the neighborhood or community by such grant.

17. It is the further finding of this Board that the requested area variances are the minimum variance necessary and adequate to allow the applicant relief from the requirements of the bulk regulations and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

18. The interests of justice will be served by allowing the granting of the requested area variances.


NOW, THEREFORE, BE IT

RESOLVED, that the Zoning Board of Appeals of the Town of New Windsor GRANT (1) a 3 ft. rear yard variance for an existing pool located closer than 10 ft. to a property line as required by Section 48-21(G)(1); (2) a 7 ft. side yard variance for an existing deck which is not set back 10 ft. from a lot line as required by Section 48-14(A)(1)(b); (3) a 7 ft. 6 in. rear yard variance for an existing deck which is not set back 10 ft. from a lot line as required by Section 48-14 (A)(1)(b); (4) 486 s.f. variance for an existing deck which occupies more than 10% of the required rear or side yard as required by Section 48-14(A)(1)(c); and (5) 392 s.f. variance for an existing pool which occupies more than 35% of the balance of the rear yard area, after deducting the area of other accessory buildings (the existing deck) as required by Section 48-21(G)(4); to allow issuance of a Certificate of Compliance for the structures existing at the above residence in accordance with plans filed with the Building Inspector and presented at the public hearing.

BE IT FURTHER,

RESOLVED, that the Secretary of the Zoning Board of Appeals of the Town of New Windsor transmit a copy of this decision to the Town Clerk, Town Planning Board and applicant.

Dated: August 10, 1992.

  
Chairman

(ZBA DISK#8-073192.dig)

Date 7/24/92, 19.....

# TOWN OF NEW WINDSOR

TOWN HALL, 555 UNION AVENUE  
NEW WINDSOR, NEW YORK 12550

TO Frances Roth 369 Morris Hill Rd DR.  
New Windsor Ny 12550

DATE			CLAIMED	ALLOWED
7/17/92	Zoning Board		75 00	
	Misc -			
	Grubel - 6 -	27.00		
	DeCouto - 8 -	36.00		
	Batts - 4 -	18.00.		
	DiGiscol - 5	<del>22.50</del> ✓		
	Dreunen - 6	27.00		
	Serbello - 6	27.00.		
			237 00	

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PUBLIC HEARING: DeGISCO, CHARLES

MR. FENWICK: This is a request for 3 foot rear yard set back for pool (Section 48-21G), 7 foot side yard variance for deck, 7 foot 6 inch rear yard - Section 48-14(1)C & D for accessory building and more than 35% of developmental coverage in order to obtain a certificate of compliance at 1 Birchwood Drive in an R-4 zone.

Charles DeGisco came before the Board representing this proposal.

MR. LUCIA: Before we start, let me just make one addition to that. There are really two other lot area coverage variances that are implicit in this, I'm not sure that the way this was presented on the agenda spelled out so just for the record, in addition to the 3 foot rear yard setback for the pool, which is pursuant to Section 48-21G1 and the 7 foot side yard for the deck and the 7 foot 6 inch rear yard variance for the deck, there's a 486 square foot lot area coverage for an accessory to the building which is actually the deck in excess of the 10% of the area of required rear or side yard as pursuant to Section 48-14(1) and also a 392 square foot lot area coverage for the pool is excess of 35% of the balance of the rear yard area. After deducting the area of the accessory building that is the deck that is pursuant to Section 48-21G(4). And I think that covers everything you're applying for.

MR. FENWICK: Yes, we have that information on this application.

MR. LUCIA: Yes, that is the denial.

MR. FENWICK: Have you read this title report?

MR. LUCIA: Yes, I have, thank you for your deed and title report copies, Mr. DiGisco. I notice a reference in there to certain covenants and restrictions, easements, agreements, grants of record but they are not completely spelled out. Is there anything of record entitled to this property to your knowledge which would prohibit you from maintaining the structures about which you're now seeking variances

from this Board?

MR. DI GISCO: In other words, are you asking me if --

MR. LUCIA: You're asking for certain area variance requirements and for coverage variance requirements, is there anything in the title to this property which says say for example, you can't maintain anything closer than 10 feet to the property therefore even if this Board granted you a variance, you still couldn't maintain it if your neighbors complained, do you have knowledge of anything of that nature?

MR. DI GISCO: No.

MR. FENWICK: We have been over this a couple of times so you are to explain to us for the record why the deck was built, where it was built, why the pool is where it is and what the situation was.

MR. DI GISCO: Yes, I can do all that. Based on the preliminary hearing that I had I believe back in March, it was based on the purchase of my property and this was the original survey of lands and I'll pass it around before I was asked to have the new survey and what this indicates was a pool, inground pool situated quite close to the property boundaries and actually two sides of my property which in itself I had never ever built accessory building would have been in violation of the setback rules, laws. In using that information, because the property just behind the pool is severely sloped and was quite overgrown and the way the pool was situated, there was a minimum amount of area that you, that I was going to be able to use for just the fact that I was able to use the property at all because it was so severely sloped. So, using that drawing that you're holding there, Mr. Fenwick, I pretty much assumed and wrongly so that this property, this pool was within the boundaries of the property itself and that anything confined within the fenced off area which is clearly indicated on the survey was perfectly legal. Obviously, I have come to find out on the second closing, because I did refinance the property, that the pool itself was in violation of the setbacks and that I need to address that issue and by doing so, the issue of the accessory building, the deck and the square footage requirement, the area variance, the use variances and such, come up for discussion.

Clearly based on this drawing, my interpretation of my property boundaries when I built the accessory building, I was clearly within my boundaries, obviously not being familiar with the law, not even knowing that the previous owner had not filed a building permit, and received or actually filed a building permit, never really received an approval to go ahead and build the pool, it opened up one situation after another. The pool was ungrounded, there was no automatic gate closures on the two gates leading to the back of the property. What I have tried to do for my own family safety and obviously for the safety of my neighbors and the benefit of the Town of New Windsor was to bring all of this business to my rear yard to be street legal so to speak. I have applied for the proper building permits, been denied, pictures, checks, photos, resurveyed, gate enclosures, grounding, I have all the necessary documents from the New York State Underwriters based on the guidance of the Board on my previous visits here. It's been my understanding I have done everything I could do to get this situation legal. The unfortunate thing is that I did not really understand the laws of the Town of New Windsor and in building this accessory building, you know, caused myself additional hardship.

MR. FENWICK: Do we have a copy of that in the file?

MR. DI GISCO: Yes, you do. Based on, you know, discussions and obviously the mailing, the Sentinel advertisement, the mailing to all my neighbors, this structure, this accessory building and the pool within my fence in no way is a detriment to the neighborhood and my neighbors on any of the three sides or quite honestly anybody within the 500 feet that were on the list, 81 people. And in addition to that, I know Mr. Fenwick you have been by and I know Mike, Frank Lisi has been by. Everything I hear is that this is a beautiful deck, it's added to the property. I can answer any questions you have for me.

MR. LUCIA: I have just a couple points of which you have covered already, thank you. First would there be an undesirable change in the character of the neighborhood or detriment to nearby properties should this Board grant you a variance?

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MR. DI GISCO: Absolutely not.

MR. LUCIA: Is there some other way you could have achieved this same result other than applying for a variance, the pool was in place, the deck?

MR. DI GISCO: The pool was in place and based on that information and my original drawing, there was no way for me to do that, the pool wasn't legal, even though the pool itself was in violation of the setback laws but yeah, I could move the house forward.

MR. LUCIA: Could any deck have been put back there given the location of the pool?

MR. DI GISCO: Not really, not without building in the direction which is indicated on this drawing, not without building in that direction.

MR. LUCIA: Do other properties in the neighborhood have decks?

MR. DI GISCO: Patio, patio, deck, patio, yeah, nothing quite honestly, sir, nothing that's built the way mine is because the way the property slopes, none of the properties either behind me or to the side of me sloped as you know, had this degree of pitch the way mine did so to build a deck the way I did, if I was to build one at all would have been the only way to do it.

MR. LUCIA: No other way to put it back up there other than --

MR. DI GISCO: No, sir.

MR. LUCIA: Area variances you're requesting are pretty substantial, there's no doubt about that but it's necessitated by the location of the pool on the slope, is that correct?

MR. DI GISCO: Yes, sir.

MR. LUCIA: Will the proposed variances have an adverse effect on the conditions of the neighborhood?

MR. DI GISCO: No, the neighbors say it's actually quite nice.



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MR. LUCIA: And well, I guess we'll take this in two parts. The difficulty with regard to the pool was not specifically created, it was there when you purchased the property?

MR. DIGISCO: And unbeknownst to me, had some information prior to and I don't really fault the survey as I once did on my original preliminary hearing. I don't fault the original survey because they didn't know any better, they were just contracted to do a survey.

MR. LUCIA: The problem with the deck really was self-created but you were unaware of the law.

MR. DIGISCO: Based on the original survey drawing that I had which I thought was correct, I felt that I was within my legal rights.

MR. LUCIA: Thank you, Mr. DiGisco.

MR. DIGISCO: Yes, sir.

MR. FENWICK: At this time, I'll open it up to the public. Anyone here that has any comments? I'll close it to the public and open it back up to the Members of the Board.

MR. KONKOL: I'll make a motion we grant the variance.

MR. LUCIA: All considered together?

MR. KONKOL: Altogether, yes.

MR. TANNER: I'll second it.

ROLL CALL:

Mr. Tanner	Aye
Mr. Nugent	Aye
Mr. Konkol	Aye
Mr. Fenwick	Aye

Date 7/29/92, 19.....

# TOWN OF NEW WINDSOR

**TOWN HALL, 555 UNION AVENUE  
NEW WINDSOR, NEW YORK 12550**

TO Frances Ruth 389 Morris Hill Rd DR.  
New Windsor - Ny 12553

[illegible]

file

April 27, 1992

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**DI GISCO, CHARLES**

Mr. Charles DiGisco came before the Board.

MR. LUCIA: Everything didn't come out in the minutes. Can I just revise that before you read it cause we added a number of things and I just think so the record is clear, I'd have you read it except you can't read my writing. The separate notices of denial one for the pool and the other for the deck. I think the first variance request referred to the pool and that's a 3 foot rear yard setback and that's pursuant to section 48-21DG and also a 392 square foot variance for the pool in excess of maximum of 35 percent rear lot coverage. That's pure to section 48-21G4 and then with regard to the deck, the variance requests are for a 7 foot side yard and for a 7' 6" rear yard for an accessory building which is what that is and that's pursuant to section 48-14A1D and also a 486 square foot variance for the pool in excess of a maximum of ten percent of the lot coverage and that's pursuant to section 48-14A1C.

MR. FENWICK: You said the pool you gave a number four hundred and something then you said the pool being in excess of, did you mean the deck being in excess?

MR. LUCIA: I'm sorry, you're right 486 square feet is the deck in excess of maximum of ten percent of the rear yard and that's to obtain certificate of compliance at 1 Birchwood Drive in a R4 zone.

MR. FENWICK: Dan, on the first one, when the pool got, let's say the pool is in, the pool at that time put him in excess by itself? In other words, if there was no deck there, the pool would be--

MR. LUCIA: That's correct and then the way it works, that area is then in turn subtracted from the rear lot area so if you are out on the first one you're even further out on the second one.

MR. FENWICK: Second one would be total then?

MR. LUCIA: That's right.

MR. FENWICK: Come on up Mr. DiGisco.

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MR. DI GISCO: For you, sir, you were not here on the first time I spoke to the board, I approached the board with this problem. This all stems from an application to refinance my mortgage and when the bank's attorney began to ask pertinent questions about the pool and if it was within the guidelines of my property and if the pool had ever received a certificate of occupancy, help me out if I make a mistake with the terminology, it had not. That started the process and I had built since the time I built the house, pool was there. I built a subsequent deck. Because my pool was very, very close to my fences but I had assumed that the fence was not my property boundary, that my property boundary extended beyond that, there was a slight accessory patio deck area that I expanded to what you will see in these pictures. So, I wound up with a problem with the pool not being grounded and now this deck building, this accessory building is in violation of the setbacks and because of all of that, I've tried to prepare some things to proceed with.

MR. KONKOL: How long have you owned the house, sir?

MR. DI GISCO: I owned the house in '88, April of '88 and some records show that the actual pool was installed somewhere in 1968, 1969 so when I closed on the house the first time, I didn't know that there was problem with the pool being too close to the property boundaries or for that matter probably more important than that, not ever being grounded. So, when I had the fire inspector or electrical inspector come to the house and after I had met with Mike originally, he had checked and found out that the pool wasn't grounded which was quite upsetting and then I had my first hearing, my first preliminary hearing to talk about this and the board had asked for some other things that evening which I hope I remembered to bring them all. The lighter colored drawing is the original from when I first purchased the home and the second drawing is the resurvey that indicates the deck. Actually, Mike you got two, did I bring you two, one that has the square footage that I am over.

MR. KONKOL: Is that right the area that--

MR. LUCIA: That was nicely done.

MR. BABCOCK: I have the new one.

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MR. DI GISCO: You should have two, you should have one without the square footage and the one that says the square footage that I am over. I have additional copies that we can run off.

MR. BABCOCK: I send one along with it.

MR. LUCIA: Your surveyor did exactly what we needed, thank you.

MR. DI GISCO: I also have this Midway Electric 782-8668 that's the, this is the gentleman that's supposed to be coming over to ground my pool. I don't know why he hasn't shown up yet. We keep calling and telling him he has to do this. This is to do the grounding work, he needs to ground pool rails, diving board and such and we are waiting for him to come to say that we can proceed with that. Obviously, at this point I haven't done anything to the pool. I did replace the latches, I haven't installed them but I've purchased new latches, other safety latches that you told me to put them on also. And I've submitted the new drawings and the new building permits were denied just like you all said they would be. And I got my checks and I guess Pat will take these.

MR. BABCOCK: For the record Dan maybe just a clarification there was a building permit issued Town of New Windsor May 4, 1969 The application--

MR. KONKOL: For the pool?

MR. BABCOCK: Yeah, only the application shows pool being 20 foot off the rear yard. His house is only 12.95, so it would be inside the house.

MR. DI GISCO: I tried to take a couple of pictures. I had mentioned also this is another thing and partially I apologize for my stupidity here but if build this deck, it's hard, I didn't know about the setback rule and I had mentioned that there was an accessory building built right on the property boundary that borders my property and that's the building that's actually my neighbor's building which appears to be in the yard.

MR. KONKOL: How close is your neighbor's building there?

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MR. DI GISCO: I can touch it but one picture here indicates where the pool is. Well, here's a good picture, this picture indicates how close the edge of the pool is to the fence and you can also see how close my neighbors pool be it so that the pool is above ground, how close to her fence or my fence and so this goes on and on and on and this is a picture from the end of the driveway to the deck and that's, it's like 81 feet and some inches but my daughter is there to give you a little perspective.

MR. KONKOL: That also accounts for why your neighbor didn't make any gripe about your building infringing.

MR. DI GISCO: He's a builder and he was in awe when I was pouring these concrete piers, he thought I was building I don't know what, a bridge.

MR. FENWICK: You probably did it the way you're supposed to but you didn't put it out to bid.

MR. DI GISCO: To add insult to injury, of course the negligence here is 100 percent my fault because I was assuming that because this fence was my within, my property boundary that as long as I wasn't connecting anything to the house that I could just build another piece of accessory building.

MR. KONKOL: For one thing, you don't have any grass to cut back there, that's for sure.

MR. DI GISCO: The other thing which I hope if you stay with these pictures, it does tell a little story. The property falls off dramatically and well that depicts part of it, that's my superstructure but the property falls off dramatically and you can't use the back of the property. Did you see any of these or have you been to my house?

MR. BABCOCK: No I haven't been there. I send people out. You don't anticipate building a structure on top of this, do you?

MR. DI GISCO: Although engineeringwise I probably could, no, I don't have--

MR. FENWICK: Just out of curiosity, we had this more than one time and I don't doubt what's going on here normally when if it was done in a normal way, the

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procedure would be to start off with footings and have a footing inspection. What do you do in a case like this? Do you accept an affidavit from the applicant?

MR. BABCOCK: Definitely not. He wouldn't have to remove it. He will have to expose at least one, I don't know how many footings but at least one or more footings so we can see them.

MR. DI GISCO: They're huge and deep.

MR. FENWICK: I was just wondering.

MR. BABCOCK: We put a note if there's three we make him expose one. If it's deep enough, we assume that the rest of them are--

MR. DI GISCO: There's 13.

MR. BABCOCK: When we get there, we'll let you know. To be very honest with you, if he doesn't get the variance we're not going to make him do anything until that time. Same thing with the grounding of the pool. We suggested that he not do anything until he knows that the structures can stay. Just by the pictures, it's substantially built, you can tell. To be quite honest with you, the deck of this criteria that's not attached to the house it does not appear to be attached to the house, it won't even require footings so and I'm sure we can get under there far enough to see how it is bolted and fastened.

MR. FENWICK: You can see it from the street basically.

MR. NUGENT: Have you talked to any of your neighbors as far as them being--

MR. DI GISCO: Like I had mentioned last time, some of them at one time or another have either used the pool which is a frightening thought, I know or used the deck.

MR. LUCIA: They used to use the pool.

MR. DI GISCO: Or used the deck. I had from both sides, actually all three sides where there are neighbors involved they saw what was there and the construction process that I went through to build this and if you were to go down Hudson Drive, even though you're right, it's all deck, it's not unattractive.

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It's very nice blue stone that I rake up and it's a very clean looking appearance, much neater and presentable than what existed although that should be no reason why we should go forward. The actual fact is that I just didn't know.

MR. FENWICK: Basic reason why we had you back here is so you can get all your ducks in a row so we can proceed to a hearing. Do we have everything straightened out now as far as coverage and we have that all listed?

MR. LUCIA: The surveyor did what we asked. We have revised notice of denials for Mike so it looks like we're all set.

MR. FENWICK: All straightened out?

MR. BABCOCK: Yes.

MR. FENWICK: Questions from members of the board?

MR. TANNER: Make a motion we set him up for a public hearing.

MR. FENWICK: I'd just like you to give him the criteria we're going to be looking for so he will have, he should have his answers set and ready to go.

MR. LUCIA: These are all area variances which you are applying for, even though they involve a number of different sections of the code. You're looking for relief from the required area that the Zoning Ordinance sets out for different setbacks and lot coverage requirements. And the legal standard this board has to grant you an area variance is something called practical difficulty. In order to establish that to the board, you have to come back and show, make a showing of significant economic injury from the application of the Zoning Ordinance to your lot. In other words, why it is that you cannot get a reasonable return on your property unless this board grants you a variance. Basically dollars and cents proof.

MR. DI GISCO: Okay, short of taking a chainsaw and trimming some of this off and filling in a portion of my pool, I'm going to be quite honest with you, I'm not, I don't believe I can get more for my home because of the way it is set up now than it did.



MR. LUCIA: You're on the right track there. If you had to have a deck and a pool that comply, it would presumably be very small. Would that diminish the value of the property as opposed to having no pool in the back at all? That's the type of showing you need to make for us. Similarly, if the, you know, you bought the property with the pool there, obviously, so you had assumed the pool added to the value of the property as it sat. If that pool was not legal, then really you should have diminished value of the property by that pool. If you paid what you actually did pay for the property but didn't have a pool, are you getting fair value for your money? That's the significant economic injury thrust you should make on that end of it and the deck you added later but you certainly can make a showing I think or hopefully you can make a showing that a complying deck would be so small to be either useful or diminish the value. Nobody wants a two foot wide deck.

MR. DI GISCO: Or a 800 square foot deck that they can't use.

MR. LUCIA: You might deal with whether or not there are alternative ways to do it so the board, I think would be interested in hearing if you could have placed this in a side yard, could that have been done without a variance. You might just run the measurements on that to show whether or not you could have gotten a deck and pool on the side yard. So basically all that taken together goes to show your significant economic injury. We'd like you to bring a copy of your deed and title policy and search.

MR. DI GISCO: One copy?

MR. LUCIA: One copy is sufficient. Photographs we already have.

MR. DI GISCO: You'll keep those for your file?

MR. FENWICK: I don't think we need all of them. Why don't we wait until the night of public hearing. We'll take a quick review.

MR. LUCIA: You can take them back. Just bring them back for the public hearing. And then we'll also need when you submit your application, two checks.

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MS. BARNHART: We have those.

MR. LUCIA: We're all set.

MR. FENWICK: We have a motion on the floor.

MR. KONKOL: I'll second it.

ROLL CALL

MR. KONKOL	AYE
MR. TANNER	AYE
MR. NUGENT	AYE
MR. FENWICK	AYE

MR. DI GISCO: I have a bit of a problem, so to speak. Traditionally, and this would be the fifth year running, since I've purchased this home, I have had this Mother's Day party at my house and--

MR. KONKOL: Go ahead and enjoy it.

PUBLIC NOTICE OF HEARING BEFORE  
ZONING BOARD OF APPEALS  
TOWN OF NEW WINDSOR

PLEASE TAKE NOTICE that the Zoning Board of Appeals  
of the TOWN OF NEW WINDSOR, New York will hold a  
Public Hearing pursuant to Section 48-34A of the  
Zoning Local Law on the following proposition:

Appeal No. 8

Request of Charles & Colasta DiGisco

for a VARIANCE of

the regulations of the Zoning Local Law to

permit existing pool & deck w/ insufficient rear yard  
setback, side yard variances for deck and accessory  
bldg. and a variance for excessive dew. coverage;

being a VARIANCE of

Section 48-14A(1)-C+D, 48-21G + G(4)

for property situated as follows:

1 Birchwood Drive, New Windsor, N.Y.

Known & designated as tax lot Section 39-

Bk. 6 Lot 1.

SAID HEARING will take place on the 13th day of

July, 1992, at the New Windsor Town Hall,  
555 Union Avenue, New Windsor, N. Y. beginning at

7:30 o'clock P. M.

Richard Fenwick  
Chairman

ZONING BOARD OF APPEALS : TOWN OF NEW WINDSOR  
COUNTY OF ORANGE : STATE OF NEW YORK

In the Matter of Application for Variance of

Charles Di Gisco

Applicant.

AFFIDAVIT OF  
SERVICE  
BY MAIL

#92-8.

STATE OF NEW YORK )  
 ) SS.:  
COUNTY OF ORANGE )

PATRICIA A. BARNHART, being duly sworn, deposes and says:

That I am not a party to the action, am over 18 years of age and reside at 7 Franklin Avenue, New Windsor, N. Y. 12553.

On July 2, 1992, I compared the 81 addressed envelopes containing the attached Notice of Public Hearing with the certified list provided by the Assessor regarding the above application for variance and I find that the addressees are identical to the list received. I then mailed the envelopes in a U. S. Depository within the Town of New Windsor.

Patricia A. Barnhart  
Patricia A. Barnhart

Sworn to before me this  
2nd day of July, 1992.

*Deborah Green*  
 \_\_\_\_\_  
 Notary Public  
**DEBORAH GREEN**  
 Notary Public, State of New York  
 Qualified in Orange County  
 # 4984065  
 Commission Expires July 15, 1993

(TA DOCDISK#7-030586.AOS)

TOWN OF NEW WINDSOR  
ZONING BOARD OF APPEALS

APPLICATION FOR VARIANCE

# 96-8

Date: 5/22/92

I. Applicant Information:

- (a) CHARLES & CELESTE DiGirolamo 1 Birchwood Dr. New Windsor  
(Name, address and phone of Applicant) (Owner) 914.565.5783
- (b) \_\_\_\_\_  
(Name, address and phone of purchaser or lessee)
- (c) \_\_\_\_\_  
(Name, address and phone of attorney)
- (d) \_\_\_\_\_  
(Name, address and phone of contractor/engineer/architect)

II. Application type:

- ☐ Use Variance ☐ Sign Variance
- ☒ Area Variance ☐ Interpretation

III. ✓ Property Information:

- (a) R.4 1 Birchwood Drive. 39.5.1 12,142.14 SF  
(Zone) (Address) (S B L) (Lot size)
- (b) What other zones lie within 500 ft.? N/A.
- (c) Is a pending sale or lease subject to ZBA approval of this application? No
- (d) When was property purchased by present owner? 4/6/88
- (e) Has property been subdivided previously? No
- (f) Has property been subject of variance previously? No  
If so, when? \_\_\_\_\_
- (g) Has an Order to Remedy Violation been issued against the property by the Building/Zoning Inspector? Yes.
- (h) Is there any outside storage at the property now or is any proposed? Describe in detail: No
- \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

IV. Use Variance. N/A

- (a) Use Variance requested from New Windsor Zoning Local Law, Section \_\_\_\_\_, Table of \_\_\_\_\_ Regs., Col. \_\_\_\_\_, to allow: \_\_\_\_\_  
(Describe proposal) \_\_\_\_\_
- \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

N/A  
 (b) The legal standard for a "use" variance is unnecessary hardship. Describe why you feel unnecessary hardship will result unless the use variance is granted. Also set forth any efforts you have made to alleviate the hardship other than this application.

V. ✓ Area variance:

(a) Area variance requested from New Windsor Zoning Local Law, Section 48-12, Table of Use/Bulk Regs. Regs., Col. F+G. 7.

48-14.1(c) Accessory Bldg.  
48-21(G)

48-216.

M-4814

Accessory Bldg.

Requirements

Proposed or Available

Variance Request

Min. Lot Area

Min. Lot Width

Reqd. Front Yd.

Reqd. ~~Front~~ Yd.

Reqd. Rear Yd.

Reqd. ~~Side~~ Yd.

Frontage\*

Max. Bldg. Hgt.

Min. Floor Area\*

Dev. Coverage\*

Floor Area Ratio\*\*

Parking Area

11-7 (10)

48-14 (10)

48-14 (10)

7

2'6"

3'

3

7'6"

7'

\* Residential Districts only

\*\* No-residential districts only

✓ (b) The legal standard for an "area" variance is practical difficulty. Describe why you feel practical difficulty will result unless the area variance is granted. Also set forth any efforts you may have made to alleviate the difficulty other than this application.  
Accessory Bldg constructed with unknown knowledge of A Law.  
Accessory Bldg not attached to any existing structure. Land consisted of  
steep grade to a fence which is indicated as being within property line.  
Failure to acquire variance will result in reduced value of property.

VI. Sign Variance: N/A.

(a) Variance requested from New Windsor Zoning Local Law, Section \_\_\_\_\_, Table of \_\_\_\_\_ Regs., Col. \_\_\_\_\_.

Requirements

Proposed or Available

Variance Request

Sign 1

Sign 2

Sign 3

Sign 4

Sign 5

(b) Describe in detail the sign(s) for which you seek a variance, and set forth your reasons for requiring extra or over size

signs.

N/A

(c) <sup>N/A</sup> What is total area in square feet of all signs on premises including signs on windows, face of building, and free-standing signs?

VII. Interpretation. <sup>N/A</sup>

- (a) Interpretation requested of New Windsor Zoning Local Law, Section \_\_\_\_\_, Table of \_\_\_\_\_ Regs., Col. \_\_\_\_\_.
- (b) Describe in detail the proposal before the Board:

VIII. <sup>✓</sup>Additional comments:

(a) Describe any conditions or safeguards you offer to ensure that the quality of the zone and neighboring zones is maintained or upgraded and that the intent and spirit of the New Windsor Zoning is fostered. (Trees, landscaping, curbs, lighting, paving, fencing, screening, sign limitations, utilities, drainage.)

All neighboring zones contain different land contours enabling various use. said property has been accessorized based on existing (prior to 4/6/88) inground pool and patio. This accessory bldg is built within property boundaries indicated on survey of 4/6/88.

IX. <sup>✓</sup>Attachments required:

Disapproval of Permit.

- ☒ Copy of referral from Bldg./Zoning Insp. or Planning Bd.
- ☒ Copy of tax map showing adjacent properties.
- ☒ Copy of contract of sale, lease or franchise agreement.
- ☒ Copy of deed and title policy.
- ☒ Copy(ies) of site plan or survey showing the size and location of the lot, the location of all buildings, facilities, utilities, access drives, parking areas, trees, landscaping, fencing, screening, signs, curbs, paving and streets within 200 ft. of the lot in question.
- <sup>N/A</sup> ☒ Copy(ies) of sign(s) with dimensions and location.
- ☒ Check in the amount of \$ 50.00 payable to TOWN OF NEW <sup>paid</sup> WINDSOR. <sub>250.00</sub>
- ☒ Photographs of existing premises which show all present

paid 4/27/92

X. Affidavit.

Date: 5/22/92

CR

STATE OF NEW YORK)

), SS. :

COUNTY OF ORANGE )

The undersigned applicant, being duly sworn, deposes and states that the information, statements and representations contained in this application are true and accurate to the best of his/her knowledge or to the best of his/or information and belief. The applicant further understands and agrees that the Zoning Board of Appeals may take action to rescind any variance granted if the conditions or situation presented herein are materially changed.

Celeste M. Digioia

(Applicant)

Sworn to before me this

27th day of May, 1992.

Salvicio Benhart.

XI. ZBA Action:

**PATRICIA A. BARNHART**  
Notary Public, State of New York  
No. 01BA4904434

### Qualified in Orange County

**Commission Expires August 31, 1973**

(a) Public Hearing date: Commission Expires August 31, 1975

(b) Variance: Granted ( ) Denied ( )

(c) Restrictions or conditions:

NOTE: A FORMAL DECISION WILL FOLLOW UPON RECEIPT OF THE PUBLIC HEARING MINUTES WHICH WILL BE ADOPTED BY RESOLUTION OF ZONING BOARD OF APPEALS AT A LATER DATE.

(ZBA DISK#7-080991.AP)





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# TOWN OF NEW WINDSOR

555 UNION AVENUE  
NEW WINDSOR, NEW YORK 12553

(81)

June 4, 1992

Mr. & Mrs. Charles DiGisco  
1 Birchwood Drive  
New Windsor, NY 12553

Re: Variance List 500ft./ 39-5-1

Dear Mr. & Mrs. DiGisco:

According to our records, the attached list of property owners are within five hundred (500) ft. of the above referenced property.

The charge for this service is \$105.00, minus your deposit of \$25.00. Please remit balance of \$80.00 to the Town Clerk's office.

Sincerely,

*Leslie Cook*  
LESLIE COOK  
Sole Assessor

LC/cp  
Attachment

~~cc: Mr. & Mrs. DiGisco~~

Chalermvong, Kasem & Kom-Kuy  
2 Cresthaven Drive  
New Windsor, NY 12553

Cimorelli Jr., Anthony & Marie  
4 Cresthaven Drive  
New Windsor, NY 12553

Gatt, Joseph & Patricia  
6 Cresthaven Drive  
New Windsor, NY 12553

Gomez, Carlos R. & Virgenmina  
8 Cresthaven Drive  
New Windsor, NY 12553

Maroulis, Evelyn E.  
10 Cresthaven Drive  
New Windsor, NY 12553

Mascitelli, Robert E. & Janet F.  
12 Cresthaven Dr.  
New Windsor, NY 12553

Bennett, Preston D. & Ellen J.  
14 Cresthaven Dr.  
New Windsor, NY 12553

Vecchio, Salvatore  
17 Valewood Dr.  
New Windsor, NY 12553

Hightower, William M. & Eleanora  
15 Valewood Dr.  
New Windsor, NY 12553

Salbucci, Sisto & Lena  
13 Valewood Dr.  
New Windsor, NY 12553

Parker, Kenneth F. & Rosalie M.  
11 Valewood Dr.  
New Windsor, NY 12553

Irwin, Mabel D.  
9 Valewood Dr.  
New Windsor, NY 12553

Pullar, William James  
7 Valewood Dr.  
New Windsor, NY 12553

Zupitza, Robert J. & Therese  
5 Valewood Dr.  
New Windsor, NY 12553

Sears, Thomas M. & Elena  
3 Valewood Dr.  
New Windsor, NY 12553

Cummings, Robert J. & Marion T.  
1 Valewood Dr.  
New Windsor, NY 12553

Bunkoff, Steven L. & Michelle L.  
34 Harth Dr.  
New Windsor, NY 12553

Green, Harold D. & T. Karole  
32 Harth Dr.  
New Windsor, NY 12553

Seagren, Carl W. & Elizabeth G.  
2 Valewood Dr.  
New Windsor, NY 12553

Dewitt, Roy G.  
4 Valewood Dr.  
New Windsor, NY 12553

Franchini, Anthony & Genvieve  
6 Valewood Dr.  
New Windsor, NY 12553

Randall, Louis D. & Marion B.  
8 Valewood Dr.  
New Windsor, NY 12553

Scherf, Howard & Phyllis  
10 Valewood Dr.  
New Windsor, NY 12553

Collery, Richard G. & Angela R.  
12 Valewood Dr.  
New Windsor, NY 12553

Suchowiecki, Michael & Janice  
14 Valewood Dr.  
New Windsor, NY 12553

Mohart, Douglas E.  
16 Valewood Dr.  
New Windsor, NY 12553

Wondsel, Theodore G. & Susan E.  
18 Valewood Dr.  
New Windsor, NY 12553

Babicz, Marlene  
18 Birchwood Dr.  
New Windsor, NY 12553

Thomas, Le Roy G. & Joyce W.  
16 Birchwood Dr.  
New Windsor, NY 12553

Satenberg, Matthew & Jacqueline M. Betz  
14 Birchwood Dr.  
New Windsor, NY 12553

Puglisi, Henry & Mary  
12 Birchwood Dr.  
New Windsor, NY 12553

Haddock, Frances & Kissam, Gary & Veronica  
10 Birchwood Dr.  
New Windsor, NY 12553

Coleman, Roy H. & Lucille R.  
8 Birchwood Dr.  
New Windsor, NY 12553

McKee, John A. & Eunice E.  
6 Birchwood Lane  
New Windsor, NY 12553

Harris, Eleanor A. & Kenneth R.  
4 Birchwood Lane  
New Windsor, NY 12553

Odell, Harriet R.  
2 Birchwood Lane  
New Windsor, NY 12553

Accumanno, Cosimos & Jenny  
1 Hudson Dr.  
New Windsor, NY 12553

Tompkins, Harry C. Jr.  
26 Harth Dr.  
New Windsor, NY 12553

Upton, Robert W. & Roma M.  
28 Harth Dr.  
New Windsor, NY 12553

Pavlik, Carl & Hazel  
30 Harth Dr.  
New Windsor, NY 12553

Burt, Lois A.  
3 Birchwood Drive  
New Windsor, NY 12553

Millen, Walter F.  
5 Birchwood Lane  
New Windsor, NY 12553

Fuat, Aydogan & Nazire  
7 Birchwood Drive  
New Windsor, NY 12553

Benichasa, John  
9 Birchwood Drive  
New Windsor, NY 12553

Spart, Philip C. & Rose M.  
11 Birchwood Drive  
New Windsor, NY 12553

Norton, Bradford A. & Loraine M.  
RD 2  
19 Shadow Lane  
Hopewell Junction, NY 12533

Thompson, Robert & Linda  
15 Hudson Drive  
New Windsor, NY 12553

Maxwell, Brian & Angela  
13 Hudson Drive  
New Windsor, NY 12553

Maxwell, Michael E. & Frances E.  
11 Hudson Drive  
New Windsor, NY 12553

Smith, Robert R. & Rhoda L.  
9 Hudson Drive  
New Windsor, NY 12553

Giuliani, Anthony & Christina  
PO Box 148  
Milton, NY 12547

DeSousa, Manuel & Diana  
5 Hudson Drive  
New Windsor, NY 12553

Sullivan, Raymond J. & Janet D.  
3 Hudson Drive  
New Windsor, NY 12553

Greeney, William J. & Diane E.  
20 Harth Drive  
New Windsor, NY 12553

Wilson, Olive A.  
22 Harth Drive  
New Windsor, NY 12553

Crosby Jr., Orbert &  
Werner, Alissa M.  
24 Harth Drive  
New Windsor, NY 12553

Rotondi, Edward M. & Mae  
2 Hudson Drive  
New Windsor, NY 12553

Conklin, Timothy & Donna  
4 Hudson Drive  
New Windsor, NY 12553

Ocskay, Elizabeth &  
Irvine, Mary Lillian  
6 Hudson Drive  
New Windsor, NY 12553

Wentzel, Mark L. & Diane M.  
8 Hudson Drive  
New Windsor, NY 12553

Baranski Jr. Charles J. & Linda  
10 Hudson Drive  
New Windsor, NY 12553

Lagoy, Raymond A. & Elizabeth T.  
12 Hudson Drive  
New Windsor, NY 12553

Reiff, Sol & Geraldine  
14 Hudson Drive  
New Windsor, NY 12553

Mazzarelli, Kathleen M.  
16 Hudson Drive  
New Windsor, NY 12553

Wilkins, Richard E. & Ellen Jane  
18 Hudson Drive  
New Windsor, NY 12553

Stanford, Elton V. & Estelle I.  
20 Hudson Drive  
New Windsor, NY 12553

Town of New Windsor  
555 Union Ave  
New Windsor, NY 12553

Lennon, Winfield E. & Barbara C.  
4 Chimney Corner  
New Windsor, NY 12553

Butler, Richard & Frances  
6 Chimney Corner  
New Windsor, NY 12553

Henry, Everette & Patrice  
5 Chimney Corner  
New Windsor, NY 12553

D'Ambrosio, Martha  
3 Chimney Corner  
New Windsor, NY 12553

Metzner, Thomas F. & Sally F.  
1 Chimney Corner  
New Windsor, NY 12553

Fox, Thomas & Kathleen  
14 Spring Rock Rd.  
New Windsor, NY 12553

Shenker, Martin F. & Bette J.  
16 Spring Rock Rd.  
New Windsor, NY 12553

Piqueras, Joseph & Cecelia  
18 Spring Rock Rd.  
New Windsor, NY 12553

Rogers, Charles W. & Doris A.  
27 Harth Dr.  
New Windsor, NY 12553

Herrman, John J. & Jeanette A.  
25 Harth Dr.  
New Windsor, NY 12553

Willkomm, Helen  
23 Harth Dr.  
New Windsor, NY 12553

Graziano, Felice & Charles  
21 Harth Dr.  
New Windsor, NY 12553

Diaz, Felix R. & Maureen I.  
63-03 Ellwell Crescent  
Rego Park, NY 11374

Pietraszewski, Peter & Patricia  
16 Willow Parkway  
New Windsor, NY 12553

OFFICE OF THE BUILDING INSPECTOR - TOWN OF NEW WINDSOR  
ORANGE COUNTY, NY

NOTICE OF DISAPPROVAL OF BUILDING PERMIT APPLICATION

DATE: 4-13-92

APPLICANT: CHARLES DIGISCO  
1 BIRCHWOOD DRIVE  
NEW WINDSOR NY 12553

**REVISED**  
**3-13-92**

PLEASE TAKE NOTICE THAT YOUR APPLICATION DATED 3-9-92  
FOR (BUILDING PERMIT) 1 To Build DECK  
LOCATED AT ONE BIRCHWOOD DRIVE

ZONE R4

DESCRIPTION OF EXISTING SITE: SEC: 39 BLOCK: 5 LOT: 1

IS DISAPPROVED ON THE FOLLOWING GROUNDS:

REAR YARD SET BACK

SIDE YARD SET BACK

10% OF LOT COVERAGE 48-14 (1-C)

BUILDING INSPECTOR

\*\*\*\*\*

REQUIREMENTS	PROPOSED OR AVAILABLE	VARIANCE REQUEST
ZONE <u>R4</u> USE <u>M-6 48-14</u>	<u>ACCESSORY</u>	<u>BUILDING</u>
MIN. LOT AREA		
MIN. LOT WIDTH		
REQ'D FRONT YD		
REQ'D SIDE YD.		
<u>48-14 ACCESSORY BLD</u>		
REQ'D TOTAL SIDE YD. <u>10'</u>	<u>3'</u>	<u>7'</u>
REQ'D REAR YD.		
<u>48-14 ACCESSORY BLD</u>		
REQ'D FRONTAGE <u>10'</u>	<u>2'6"</u>	<u>7'6"</u>
MAX. BLDG. HT.		
FLOOR AREA RATIO		



NEW WINDSOR NY 12553

PLEASE TAKE NOTICE THAT YOUR APPLICATION DATED 3-9-92  
FOR (BUILDING PERMIT) TO BUILD DECK  
LOCATED AT ONE BIRCHWOOD DRIVE  
ZONE R4

DESCRIPTION OF EXISTING SITE: SEC: 39 BLOCK: 5 LOT: 1

IS DISAPPROVED ON THE FOLLOWING GROUNDS:

REAR YARD SET BACK  
SIDE YARD SET BACK  
10% OF LOT COVERAGE 48-14 (1-C)

BUILDING INSPECTOR

\*\*\*\*\*

REQUIREMENTS	PROPOSED OR AVAILABLE	VARIANCE REQUEST
ZONE <u>R4</u> USE <u>M-6 48-14</u>	<u>ACCESSORY</u>	<u>BUILDINGS</u>
MIN. LOT AREA		
MIN. LOT WIDTH		
REQ'D FRONT YD.		
REQ'D SIDE YD.		
<u>48-14 ACCESSORY BLD</u> REQ'D TOTAL SIDE YD. <u>10'</u>	<u>3'</u>	<u>7'</u>
REQ'D REAR YD.		
<u>48-14 ACCESSORY BLD</u> REQ'D FRONTAGE <u>10'</u>	<u>2'6"</u>	<u>7'6"</u>
MAX. BLDG. HT.		
FLOOR AREA RATIO		
MIN. LIVABLE AREA		
DEV. COVERAGE		

0% LOT COVERAGE  
FOR ACCESSORY BLD 48-14 (1-C) 3078 SQ.FT. 793 SQ.FT. 486 SQ.FT.

APPLICANT IS TO PLEASE CONTACT THE ZONING BOARD SECRETARY AT:  
[REDACTED] TO MAKE AN APPOINTMENT WITH THE ZONING BOARD  
OF APPEALS.

CC: Z.B.A., APPLICANT, E.P. FILE

OFFICE OF THE BUILDING INSPECTOR - TOWN OF NEW WINDSOR  
ORANGE COUNTY, NY

NOTICE OF DISAPPROVAL OF BUILDING PERMIT APPLICATION

DATE: 4-13-92

APPLICANT: CHARLES DIGISCO  
1 BIRCHWOOD DRIVE  
NEW WINDSOR N.Y. 12553

~~REVISED~~  
3-13-92

PLEASE TAKE NOTICE THAT YOUR APPLICATION DATED 3-9-92  
CERTIFICATE OF OCCUPANCY  
FOR ~~(BUILDING PERMIT)~~ FOR IN-GROUND POOL + CONCRETE  
LOCATED AT ONE BIRCHWOOD DRIVE PAD

ZONE R4  
DESCRIPTION OF EXISTING SITE: SEC: 39 BLOCK: 5 LOT: 1

IS DISAPPROVED ON THE FOLLOWING GROUNDS: REAR YARD

- ① SET BACK FOR SWIMMING POOL 48-21(G)
- ② 35% ~~LOT~~ OF REAR LOT COVERAGE 48-21(G) 4

  
BUILDING INSPECTOR

\*\*\*\*\*

<u>REQUIREMENTS</u>	<u>PROPOSED OR AVAILABLE</u>	<u>VARIANCE REQUEST</u>
ZONE <u>R-4</u> USE <u>M-7</u>		
MIN. LOT AREA		
MIN. LOT WIDTH		
REQ'D FRONT YD		
REQ'D SIDE YD.		
REQ'D TOTAL SIDE YD.		
REQ'D REAR YD. <u>10</u>	<u>7</u>	<u>3</u>
REQ'D FRONTAGE		
MAX. BLDG. HT.		

NEW WINDSOR N.Y. 12553

PLEASE TAKE NOTICE THAT YOUR APPLICATION DATED 3-9-92  
CERTIFICATE OF OCCUPANCY  
FOR (BUILDING PERMIT) FOR IN-GROUND POOL + CONCRETE PAD  
LOCATED AT ONE BIRCHWOOD DRIVE

ZONE R4  
DESCRIPTION OF EXISTING SITE: SEC: 39 BLOCK: 5 LOT: 1

IS DISAPPROVED ON THE FOLLOWING GROUNDS: REAR YARD

- ① SET BACK FOR SWIMMING POOL 48-21(G)
- ② 35% LOT OF REAR LOT COVERAGE 48-21(G)4

Michael Dubach  
BUILDING INSPECTOR

\*\*\*\*\*

REQUIREMENTS	PROPOSED OR AVAILABLE	VARIANCE REQUEST
ZONE <u>R-4</u> USE <u>M-7</u>		
MIN. LOT AREA		
MIN. LOT WIDTH		
REQ'D FRONT YD		
REQ'D SIDE YD.		
REQ'D TOTAL SIDE YD.		
REQ'D REAR YD. <u>10</u>	<u>7</u>	<u>3</u>
REQ'D FRONTAGE		
MAX. BLDG. HT.		
FLOOR AREA RATIO		
MIN. LIVABLE AREA		
DEV. COVERAGE	%	%
<u>48-21 G 4 35%</u>	<u>797 SQFT</u>	<u>1189 SQFT 392 SQ FT</u>

APPLICANT IS TO PLEASE CONTACT THE ZONING BOARD SECRETARY AT:  
[REDACTED] TO MAKE AN APPOINTMENT WITH THE ZONING BOARD  
OF APPEALS.

914) 363-4630

CC: Z.B.A., APPLICANT, E.P. FILE

# SURVEY OF LANDS OF CHARLES & CELESTE DIGISCO

TOWN OF NEW WINDSOR, ORANGE COUNTY, NEW YORK

SCALE: 1 INCH = 20 FEET DATE: APRIL 6, 1988 REVISED: APRIL 1, 1992

## TAX MAP DESIGNATION

SECTION 39 BLOCK 5 LOT 1

## DEED REFERENCE

LIBER 2232 PAGE 748

## REFERENCE:

BEING LOT #1 ON A MAP OF PLOT D  
WILLOW ACRES DEVELOPMENT FILED  
IN THE ORANGE CO. CLERK'S OFFICE  
JANUARY 30, 1961 AS MAP # 1910.

## REAR YARD AREAS

REAR YARD	3,070 S.F.
PATIO BLOCKS	434 S.F.
CONC. AREA	244 S.F.
WOODEN DECK	793 S.F.
POOL	511 S.F.

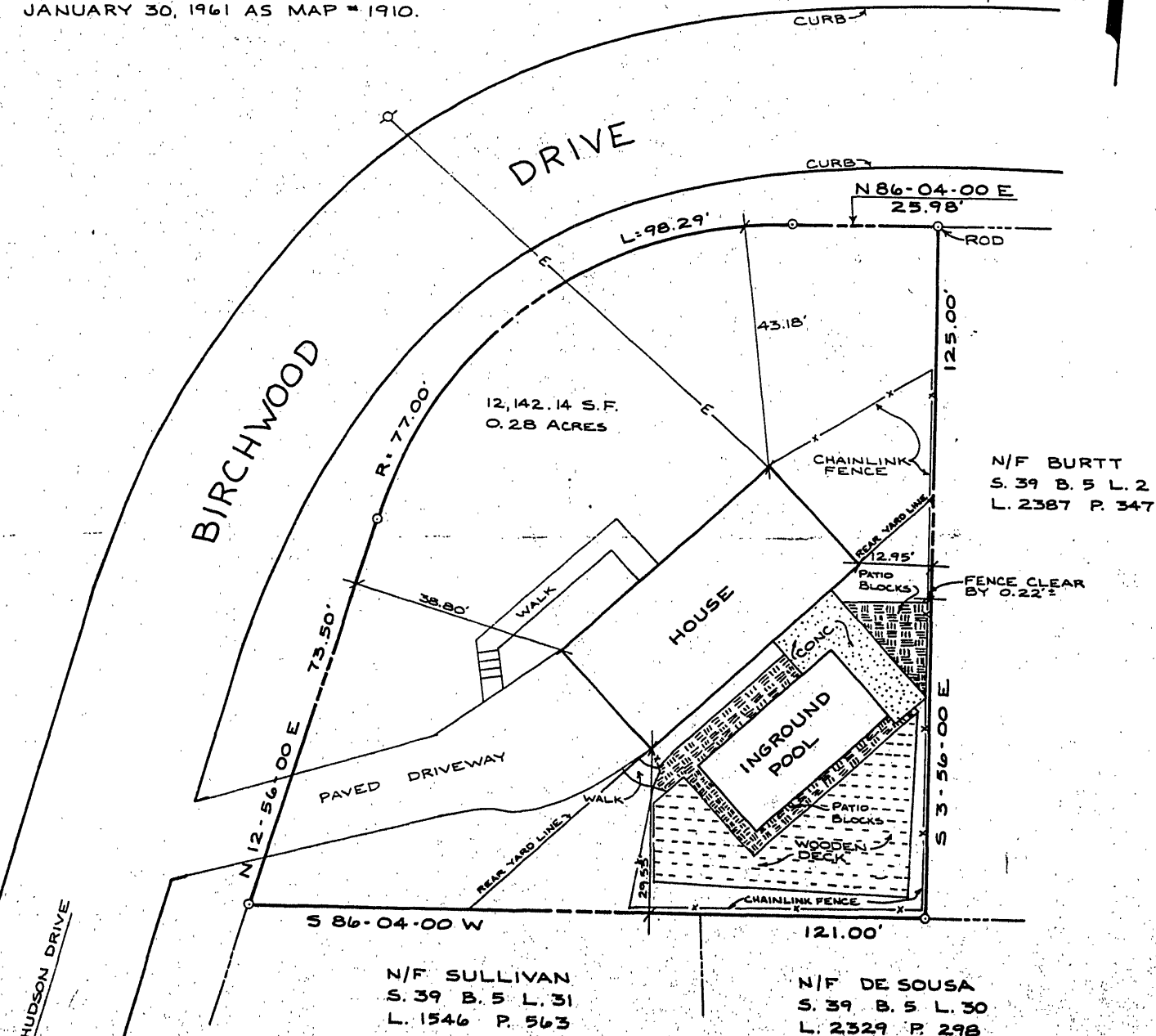
## R-4 ZONE

### REQUIRED:

DECK: 10% OF 3,070 = 307 S.F.  
POOL: 35% OF 2,277 = 797 S.F.

### EXISTING:

793 S.F.  
1189 S.F.



APRIL 1, 1992

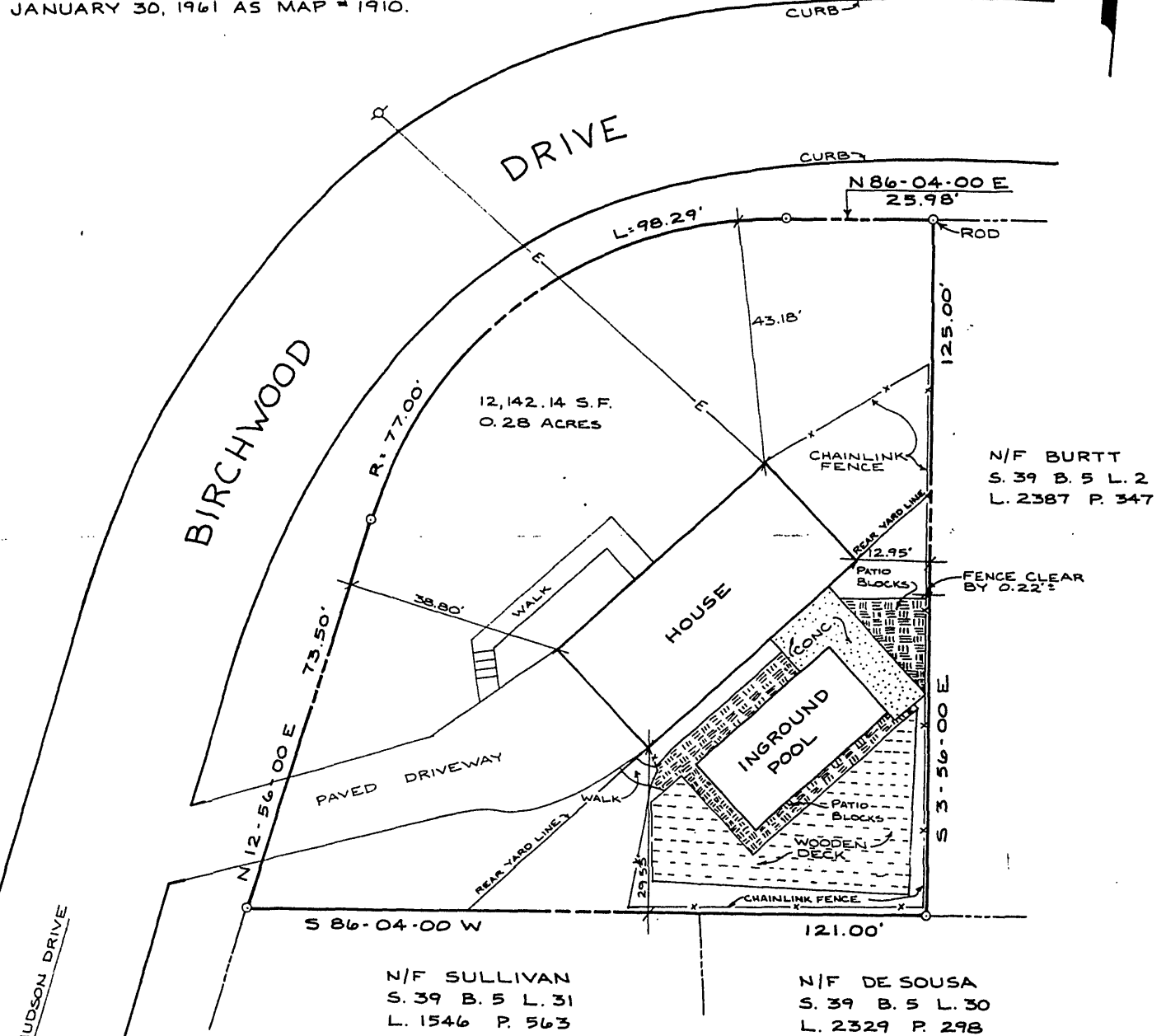
CERTIFIED TO CHARLES AND CELESTE  
DIGISCO, MARINE MIDLAND  
BANK, ITS SUCCESSORS AND OR ASSIGNS,  
TRANS AMERICA TITLE INSURANCE CO. OF

Certifications indicated hereon signify that this survey was prepared in accordance with the existing Code of Practice for Land Surveyors adopted by the Delaware Hudson Land Surveyors Association. Said certifications shall run only to those named individuals and / or institutions for whom the survey is prepared. Certifications are not transferable to additional individuals, institutions, their successors and / or assigns.

REFERENCE:  
BEING LOT #1 ON A MAP OF PLOT D  
WILLOW ACRES DEVELOPMENT FILED  
IN THE ORANGE CO. CLERK'S OFFICE  
JANUARY 30, 1961 AS MAP # 1910.

WOODEN DECK 793 S.F.  
POOL 511 S.F.  
R-4 ZONE

REQUIRED:  
DECK: 10% OF 3,070 = 307 S.F.  
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EXISTING:  
793 S.F.  
1189 S.F.



APRIL 1, 1992  
CERTIFIED TO CHARLES AND CELESTE  
DIGISCO, MARINE MIDLAND  
BANK, ITS SUCCESSORS AND OR ASSIGNS,  
TRANS AMERICA TITLE INSURANCE CO. OF  
NEW YORK, THAT THE KARVIN ABSTRACT TO BE  
A TRUE AND CORRECT COPY OF THE  
BEST OF THE RECORDS AND BELIEF  
CORRECT.



DANIEL P. YANOSH, L.S.  
N.Y.S.L.C. # 49561

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Unauthorized alteration or addition to a survey map bearing a licensed land surveyor's seal is a violation of section 2209 subdivision 2 of the N.Y. State Education Law. Only copies from the original of this survey marked with an original of the surveyor's inked seal or his embossed seal shall be considered to be valid true copies.

Subject to an up to date abstract of title.  
Subject to underground utilities and easements not revealed and / or not visible at time of field survey.

DANIEL P. YANOSH, L.S.  
30-32 INDUSTRIAL DRIVE

# SURVEY OF LANDS OF CHARLES & CELESTE DIGISCO

TOWN OF NEW WINDSOR, ORANGE COUNTY, NEW YORK

SCALE: 1 INCH = 20 FEET DATE: APRIL 6, 1988 REVISED: APRIL 1, 1992

## TAX MAP DESIGNATION

SECTION 39 BLOCK 5 LOT 1

## DEED REFERENCE

LIBER 2232 PAGE 748

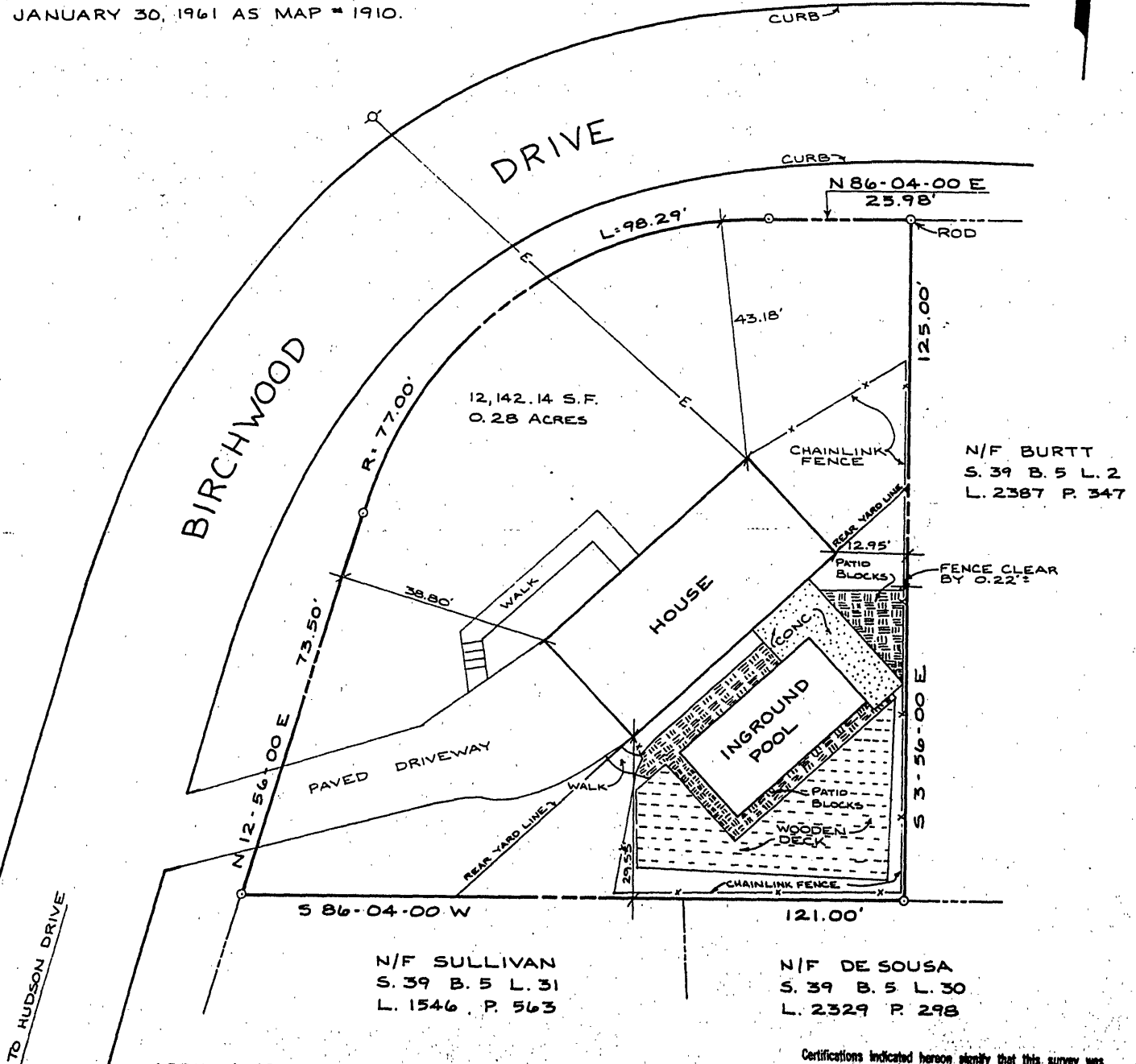
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WILLOW ACRES DEVELOPMENT FILED  
IN THE ORANGE CO. CLERK'S OFFICE  
JANUARY 30, 1961 AS MAP # 1910.

## REAR YARD AREAS

REAR YARD 3,070 S.F.  
PATIO BLOCKS 434 S.F.  
CONC. AREA 244 S.F.  
WOODEN DECK 793 S.F.  
POOL 511 S.F.  
R-4 ZONE

	REQUIRED	EXISTING
DECK: 10% OF 3,070	307 S.F.	793 S.F.
POOL: 35% OF 2,277	797 S.F.	1189 S.F.



APRIL 1, 1992  
CERTIFIED TO CHARLES AND CELESTE  
DIGISCO, MARINE MIDLAND  
BANK, ITS SUCCESSORS AND OR ASSIGNS,  
TRANS AMERICA TITLE INSURANCE CO. OF  
NEW YORK, THAT THE KARVIN ABSTRACT TO BE  
A TRUE AND CORRECT COPY AND THAT IT IS TO THE  
BEST OF OUR KNOWLEDGE AND BELIEF.

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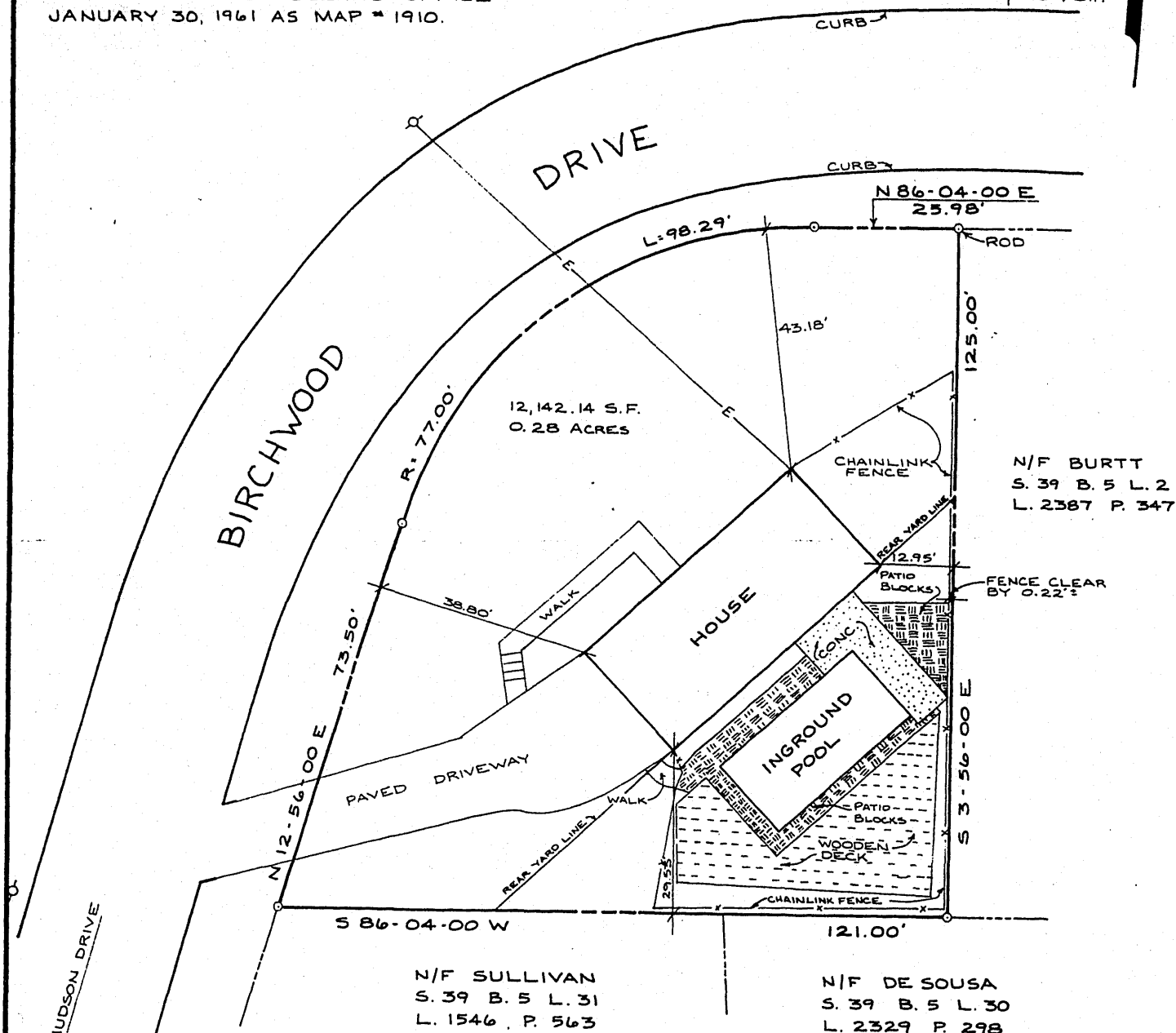
BEING LOT #1 ON A MAP OF PLOT D  
WILLOW ACRES DEVELOPMENT FILED  
IN THE ORANGE CO. CLERK'S OFFICE  
JANUARY 30, 1961 AS MAP # 1910.

POOL  
R-4 ZONE

511 S.F.

REQUIRED  
DECK: 10% OF 3,070 = 307 S.F.  
POOL: 35% OF 2,277 = 797 S.F.

EXISTING:  
793 S.F.  
1189 S.F.



APRIL 1, 1992  
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DIGISCO, MARINE MIDLAND  
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A TRUE STATEMENT AND THAT IT IS TO THE  
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CORRECT.



DANIEL P. YANOSH, L.S.  
NYS LIC. #49561

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Subject to an up to date abstract of title.  
Subject to underground utilities and easements not recorded and / or not visible at time of field survey.

DANIEL P. YANOSH, L.S.

OFFICE OF THE BUILDING INSPECTOR - TOWN OF NEW WINDSOR  
ORANGE COUNTY, NY

NOTICE OF DISAPPROVAL OF BUILDING PERMIT APPLICATION  
CERTIFICATE OF OCCUPANCY

DATE: 3-19-92

APPLICANT: Charles DiGisco  
1 Birchwood Drive  
New Windsor, N.Y. 12553

#1

Part 2

PLEASE TAKE NOTICE THAT YOUR APPLICATION DATED 3-9-92  
CERTIFICATE OF OCCUPANCY  
FOR (~~BUILDING PERMIT~~) For in-ground pool + concrete pad  
LOCATED AT one Birchwood Drive

ZONE R-4

DESCRIPTION OF EXISTING SITE: SEC: 39 BLOCK: 5 LOT: 1

IS DISAPPROVED ON THE FOLLOWING GROUNDS: Rear Yard  
Set Back For Swimming Pools

Michael Babcock @  
BUILDING INSPECTOR

\*\*\*\*\*

<u>REQUIREMENTS</u>	<u>PROPOSED OR AVAILABLE</u>	<u>VARIANCE REQUEST</u>
ZONE <u>R-4</u> USE <u>(M-7)</u>	<u>(48-216)</u>	<u>Swimming Pools</u>
MIN. LOT AREA		
MIN. LOT WIDTH		
REQ'D FRONT YD		
REQ'D SIDE YD.		
REQ'D TOTAL SIDE YD.		
REQ'D REAR YD. <u>10</u>	<u>7</u>	<u>3</u>
REQ'D FRONTAGE		
MAX. BLDG. HT.		
FLOOR AREA RATIO		
MIN. LIVABLE AREA		



BIRCHWOOD DRIVE  
New Windsor, N.Y. 12553

17110

PLEASE TAKE NOTICE THAT YOUR APPLICATION DATED 3-9-92  
CERTIFICATE OF OCCUPANCY  
FOR (~~BUILDING PERMIT~~) For in-ground pool + concrete pad  
LOCATED AT one Birchwood Drive

ZONE R-4  
DESCRIPTION OF EXISTING SITE: SEC: 39 BLOCK: 5 LOT: 1

IS DISAPPROVED ON THE FOLLOWING GROUNDS: Rear Yard  
Set Back For Swimming Pools

Michael Babcock   
BUILDING INSPECTOR

\*\*\*\*\*

REQUIREMENTS	PROPOSED OR AVAILABLE	VARIANCE REQUEST
ZONE <u>R-4</u> USE <u>(M-7)</u>	<u>(48-21G)</u>	<u>Swimming Pools</u>
MIN. LOT AREA		
MIN. LOT WIDTH		
REQ'D FRONT YD		
REQ'D SIDE YD.		
REQ'D TOTAL SIDE YD.		
REQ'D REAR YD. <u>10</u>	<u>7</u>	<u>3</u>
REQ'D FRONTAGE		
MAX. BLDG. HT.		
FLOOR AREA RATIO		
MIN. LIVABLE AREA		
DEV. COVERAGE	%	%

APPLICANT IS TO PLEASE CONTACT THE ZONING BOARD SECRETARY AT:  
[REDACTED] TO MAKE AN APPOINTMENT WITH THE ZONING BOARD  
OF APPEALS.

914) 563-4630

CC: Z.B.A., APPLICANT, B.P. FILE

No 44

May 5, 1969

## BUILDING PERMIT

SWIMMING POOL

FEE: 750

A permit is hereby given by the Zoning Officer of the Town of New Windsor, Orange County, N. Y., for building as described:

Owner's Name HARRY JORDAN

Address 1 BIRCHWOOD DR

Architect's Name N. A. 39-51

Address

Builder's Name WILLIAM GALATI

Address 72 POIPHAR ST NEWBURGH N.Y.

Location of Building 1 BIRCHWOOD DR

Material METAL & PLASTIC Number of Stories — Number of Families —

Dimensions of Building 16 x 32 Dimensions of Lot 170 x 120

Use of Building SWIMMING POOL

Number of Toilets — AND 4' HIGH FENCE Number of Baths —

Heating Plant

I am familiar with the Zoning Ordinance of the Town of New Windsor.

Remarks:

Signature of Applicant William R. Galati

Approximate Cost \$2695.00

Action of —

Planning Board

Highway

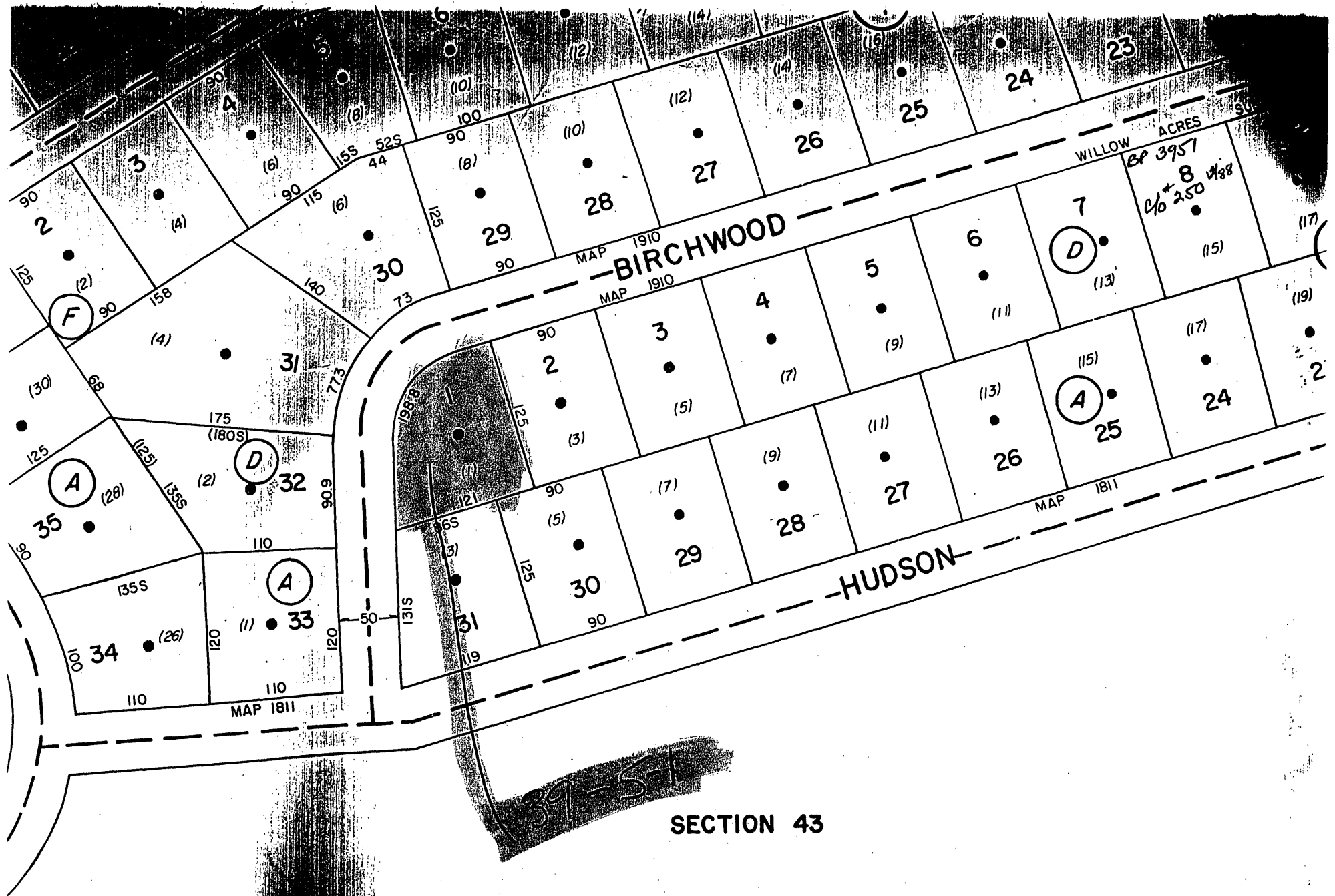
Water

Sewer

Zoning Board of Appeals

Lawrence J. Jones  
Zoning Officer

A permit under which no work is commenced within 6 months after issuance shall expire by limitation and a new permit shall be secured before work is started.



SECTION 43



PRELIMINARY MEETING: DI GISCO, CHARLES

MR. FENWICK: This is a request for 7 foot side yard, 7 foot 6 inch rear yard for existing accessory building, and 3 foot rear yard for existing inground pool with concrete pad for purposes of obtaining a certificate of compliance at One Birchwood Drive in an R-4 zone.

Mr. Charles DiGisco came before the Board representing this proposal.

MR. DI GISCO: Good evening, of course I personally feel that my problem is severe so I'd like to abide by these rules here. If I could just give you a little bit of history, would that be okay?

MR. FENWICK: Sure, that is what we want.

MR. DI GISCO: I purchased this house in 1988. This is the only copy of that that I have. I purchased this house in 1988 and of course the bank tells me I need to have a survey of the land, engineering study and so forth and the engineering study was done by Clark Engineers. The title company was Carvin Abstract and the engineer New York State licensed land surveyor was Daniel Yanosh and the survey indicates my property boundaries in addition to a chain link fence, concrete pad and inground pool. And I'm buying the house and I'm assuming that my house is well within compliance with all the building laws and codes within the Town of New Windsor. Otherwise, the bank wouldn't let me buy the house.

Well, of course, you know, the interest rates have come down and I have tried to refinance my home to get a better mortgage rate and in doing so, the very sharp lawyer Copald and Copald in Highland Falls pointed out that I did not have a certificate of occupancy for my pool. And I'm embarrassed to tell you that the problem is a lot worse than that. I come to find out after the underwriter comes to my house, Ernie Bellow (phonetic) comes to my house and says you have another problem and the problem is that your pool is not grounded. And if you hear a little bubble in my stomach of nervousness is because we have had some warm summers and we have had people in my pool constantly and this was never indicated.

To compound matters even worse, when I did meet with Mr. Babcock, who has been very helpful to me, he indicated that the original owners of the house, Mr. Jordon, Harry Jordon did file a building permit in May of 1969 for a pool. Which was sold by Buster Crab or Bill Galati, whatever his name is. They did not submit to the town an accurate drawing as to where the pool was going to be placed in relationship to the house and the property boundary. If Michael could help me out, it was a rough sketch on a lined piece of paper noting that the pool was going to be within these setbacks, is that the right terminology?

MR. BABCOCK: Yes.

MR. DI GISCO: So when I bought the house, there was this little patio pad area not quite like a deck but with wood and stone right in this eastern most corner of my property. Which you can see doesn't really exist on this original drawing but was right here. Well, I expanded that and I expanded it to include this basically these two triangles, this one and this one. This one and this one with a deck which turns out to be 800 square feet. Well, shame on me because I didn't know that my property, as it existed, did not meet the building codes appeared and quite frankly, I felt that if I was building within the fence which I was told was all legitimate that I was legitimate. Well, come to find out that I'm not. The deck is not, the pool is not, there's no certificate, I didn't file a building permit for a deck which I have done. It has been disapproved. The house is nonconforming.

MR. FENWICK: When did you file a building permit for the deck?

MR. DI GISCO: Just recently.

MR. BABCOCK: Once we found out all the problems.

MR. DI GISCO: I didn't for the simple reason that I built, I thought that I built the deck within boundaries. It doesn't indicate that my fence or my pool meets these setback rules and regulations.

So to be quite honest with you, when I stand at my fence, on the eastern most portion of the property, I

can almost touch my neighbor's pool and when if she were to stand on the top of my fence, she could jump in the corner of my pool which happens to be the deep end. And you know I'm in a terrible position because I own the house and now I need to get it up to the code of the Town of New Windsor.

The bank quite frankly has been very good to me and they said okay, we are going to let you close on the house on the refinancing and they have let me do that. However, it's not without a hitch. They have held a grotesque amount of money in escrow. It's little people big people syndrome I guess but this is my problem.

To give you some other data if I may. The house was originally owned by the Jordons. They sold it to a gentleman Mr. Malar (phonetic) whose lawyers did not pick up these problems. He sold the house from Malar to my wife and I in 1988. Those lawyers didn't pick up the problem and wasn't until this most recent lawyer Copald and Copald did he pick up the problem.

I also add for the record, I might add that the title company told me that I was within legal limits of the Town of New Windsor. Now, I don't know Michael has opened my eyes up to a multitude of problems. However, this guy is, this guy Ernie Bellow who came to my house to inspect the pool, he tested to see if it was grounded, he told me it wasn't.

MR. FENWICK: Must be a metal frame pool?

MR. DI GISCO: Yes, it is. Well, the what do you call it, the coping around seems like there is a galvanized piece underneath that. I don't believe that the actual wall of the pool is steel, I think that that has been replaced at one time.

MR. BABCOCK: This pool was put in in 1969 so they didn't do much of anything except make sure the filter ran.

MR. DI GISCO: This patio that exists, this patio deck area that did exist is not indicated on the original survey. I'd like to point out that problem. I have since built a deck which I don't know exactly what the code is for building a deck but I'll tell you

preliminary that I dug 48 inches in the ground and sunk 12 inch solid tubes doubled up 2 by 12's, 2 by 8 joists and decking. My deck is built better than my house. My house is pre-engineered pieces.

MR. FENWICK: How far away is the pool from the property line?

MR. BABCOCK: Seven feet.

MR. DI GISCO: I could stand like this and touch the fence from the edge of the pool.

MR. TANNER: Corner of the house is only 12 feet?

MR. DI GISCO: It looks closer than that. The house, as you know, was built late 50's, early 60's and to the best of my knowledge, from the engineering report, Clark Engineers, they had labeled the house as nonconforming primarily I think because the no building codes existed at that time or whatever the case may be.

MR. BABCOCK: 1962, according to our records, it was built.

MR. DI GISCO: As I was building this deck, I am, the neighbor to my east, Mrs. Spino and the neighbor to my south, Mr. Desusa (phonetic) all complimented on how nice this structure that I was building looked and much better to look at than these weeds that existed. In addition, one thing also that's probably not to be really illustrated on this drawing when I stand at the southeastern most corner of my property, at my fence, I can lean against the fence and touch a metal structure on Mr. Desusa's property so the whole situation is complicated by all of these things and just guide me to make me street legal.

MR. FENWICK: The attorneys that you spoke to are your attorneys or the bank attorneys?

MR. DE GISCO: Copald and Copald on that particular closing I did not have an attorney to be quite frank I had considered it right up until the point when I found out that the attorney that I had on the last closing did not really fulfill his obligation to me, the product that he was offering me at this point I consider negligent.



MR. FENWICK: I mean the people, this attorney that has made you aware, this is the bank's attorney.

MR. DE GISCO: Yes, sir. Who will be my attorney for some subsequent litigation I'll probably be proceeding with concerning these issues. Because, the house I purchased for all intense purposes I should have never been allowed to purchase it the way it was. And thank God that I had the money at the time to fix what's broken but I didn't break it.

What I'm here to ask the Board and I would be more than pleased to come back here again or however many times is necessary to ask for this variance of this structure, the accessory structure and the pool within my property boundaries.

MR. FENWICK: Accessory structure you're speaking of is the deck?

MR. DE GISCO: Yes, sir. Is that the correct term?

MR. BABCOCK: Yes.

MR. LUCIA: Accessory building?

MR. BABCOCK: Yes, it's under their section of code that calls for accessory buildings. Since the fact that he has did get a permit for he didn't there was a permit issued for the pool that's why there's two denials, denial for the C.O. for that permit so that we can clear that up and also the denial for the permit to build the deck.

MR. LUCIA: It appears on the accessory building that is the deck. There is two variances required, one a side yard variance of 7 feet, a rear yard variance of 7 feet 6 inch and the pool itself only a rear yard variance of 3 feet. In going over those section though it's possible there could be some other variances required and I just raise it so that we get everything out of the way all at one time. Section 48-14A(1)(C) says that accessory buildings shall not occupy more than 10 percent of the area of the required rear or side yards. That is pretty good sized deck.

MR. DI GISCO: 800 square feet of decking.

MR. LUCIA: You may need an area variance for the deck area. Similarly, Section 48-2(1)(G)(4) says that a pool shall not occupy more than 35 percent of the balance of the rear yard area after deducting the area of among other things accessory buildings, that's the deck. So, area-wise this seems to be a real bind.

MR. TANNER: Would it be worth his while to get an up to date survey with the deck on it and the whole thing?

MR. LUCIA: I think either an updated survey or have unless you're real good on mathematics and geometry to do those computations because the Board really needs, I think, data on how much of a variance you need on those items. Just eyeballing it appears you'd be in violation on both issues. But, I'm certainly not a surveyor or engineer but somebody probably should do those computations for you and you know if those variances are also required go for everything you need at one time.

MR. DI GISCO: Quite frankly, I'm really at a loss because I need your help. I don't really know where to turn because I was assuming that this particular New York State licensed engineer was up to snuff and I mean, I don't know where to go. I don't know who to go to to get this done.

MR. TANNER: He maybe except the deck area isn't on this.

MR. DI GISCO: What about the pool, like I said, I can put my toe to the edge of the pool and I could reach my hand over my property boundary.

MR. FENWICK: Problem with that he has nothing except a sketch.

MR. DI GISCO: That was with the original building permit and knowing that no building permits were issued at the time because although I put the pool in awhile after that just knowing the criteria I had to meet was nothing like what you're supposed to and after all was said with mine, I had a building permit because that was all they told me I needed, C.O.'s never even came into play until probably the last couple of years. They are always supposed to be there but they were just

never pursued by the town when people walked away they walked away with the thought I have a building permit. You have a building permit which this is a building permit, whatever it was based on it was supposed to be inspected by somebody from the town who said okay, this is all right.

MR. TANNER: They just didn't inspect them.

MR. FENWICK: They just didn't inspect them and along the line maybe the lines is a little bit out at the time I'm talking about 1969 or whatever this was built so it probably we're trying to correct a problem that was built a long time ago so who knows if at the time there wasn't something set up that said that that pool is all right so to blame someone that says that pool was wrong you know unless somebody really points out that it's wrong maybe it wasn't at the time.

MR. DI GISCO: I'm concerned in making it right. It's a pretty big pool, 16 by 32 pool.

MR. FENWICK: The bigger problem is the deck. The deck is considerably -- if you have passed this piece of property, you look at the back yard and you see deck.

MR. TANNER: I'd like to see accurate numbers, it's real hard to give a variance if you don't know how far the deck is off the property line, how far the pool is actually off the property line, how much coverage each is and really a surveyor is the only one who can do that.

MR. FENWICK: We're into a coverage situation where this is the side yard from here to here so that is what your side yard is remaining the rest of this is front yard. So, although your pool may make it in 35 percent because you go all the way to this point, your deck isn't going to make it. We already know that so --

MR. TANNER: I think if you're going to litigate, it would be good to have accurate survey.

MR. FENWICK: Absolutely.

MR. LUCIA: The Board is not requiring you to get a survey but we do need accurate data in which to grant any variance so whether you go and get a complete

survey or just hire an engineer surveyor to come back with the computation is up to you but we somehow need accurate data.

MR. DI GISCO: Point me in the right direction.

MR. TANNER: Off the record?

MR. DI GISCO: Someone who's going to know the law, send me to somebody who knows what the laws really are.

MR. LUCIA: I think the Board, you know, doesn't look behind who is -- if you come in with computations by any licensed surveyor, we certainly would accept that at face value.

MR. DI GISCO: So, I can call the same guy?

MR. LUCIA: He may not have been wrong.

MR. FENWICK: That is what I'm trying to tell you, he may not have been wrong.

MR. DI GISCO: The only question that keeps coming up, I'm a little ignorant assuming that the setback is 10 feet from the property boundary, the pool, the corner of the pool is 6 feet from the property line.

MR. BABCOCK: Keep in mind the surveyor has no obligation to draw a plan whether it's to the code or not. His obligation is to draw what is there.

MR. DI GISCO: Did anyone have that obligation to tell me what the right or wrong this was?

MR. LUCIA: Well, you made a number of charges about attorneys and title companies whatever but I talked to your attorney, like everything else, there's a wealth of knowledge in fine print. I'm sure the contract you signed to buy this piece of property was subject to building and zoning ordinances. That means it's your risk. I'm sure the title policy is also subject to building and zoning ordinance. That means it's your risk. So, those risks need to be resolved by you by affirmative investigation.

MR. DI GISCO: Which I am doing.

MR. LUCIA: As far as the surveyor, he would not know when that pool was put in. It might have been grandfathered as pre-existing nonconforming pool. So, just to go out and tell you what is on the property doesn't tell you when it was put there or what it's legal status was. There's a whole interplay of issues.

MR. BABCOCK: We get surveys today that are correct and actual field locations but when they come in they are not correct as far as the zoning and they wind up in front of the Zoning Board.

MR. TANNER: This guy would probably know where the stakes are.

MR. BABCOCK: It's going to be reasonable to hire the same guy that's already done it.

MR. FENWICK: Considering he's still around since it's 1988.

MR. TANNER: He'd have to do measurements for a couple of pieces.

MR. FENWICK: You've got three pipes on the property, all he has to do is hit the pipes and he'll be right on.

MRS. BARNHART: When you get your new figures just bring them to the Building Inspector so we can do an amended notice because this one here is not complete right now.

MR. FENWICK: We do have to know the square footage situation taking a perpendicular line from here to here, this point to this point, this is side and rear yard. You'd have to address the square footage problem.

MR. DI GISCO: Do you suggest I have it done by the surveyor?

MR. FENWICK: He can do it, he can hit the pipes over here and with a little bit of math and tell you exactly how far away you are.

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MR. LUCIA: Chairman is not suggesting a surveyor, he's saying it might be easier to use the same guy. You're welcome to do what you feel is best.

MR. FENWICK: Who built the deck?

MR. DI GISCO: I built it myself.

MR. FENWICK: Can you tell me why you didn't have a building permit?

MR. DI GISCO: Quite honestly, I had used this as my jumping off point so to speak and when I looked at what was existing, which was never indicated on here, and what I was adding, considering that the ground was sloped, I just made adjustments with these percentages to bring the property to, to bring the deck actually level. And to be honest with you, I realize that I am in error but I had figured that if I was not adding to my house and no one was living in this accessory building day-to-day and I was building it within this boundary, I didn't really feel like I was in any violation.

MR. FENWICK: Okay.

MR. DI GISCO: Which at that time is a very poor excuse, I understand that.

MR. FENWICK: Okay. It's up to you as far as coming back for the next preliminary. We're not going to set you up for a public hearing or whatever in fact I'll not even suggest that you go to a public hearing without all the information first.

MR. BABCOCK: What you do when you do retain the surveyor, if you cannot explain to him what he's trying, what we need, have him call me and I'll explain it to him. You have 10 percent for the accessory and 35 for the pool.

MR. DI GISCO: Okay.

MR. BABCOCK: I'll read it to him.

MR. FENWICK: When the time comes, some of the things you're going to need is your title policy and everything else and deed also pictures of the property

and looks like you're going to have to keep pursuing this if you're going to go into your bank situation. These are things that maybe just something you can get out of the way along the while while you're getting your survey done and all that. Anything else?

MR. LUCIA: No. He'll be back for another preliminary so I'll give you the formal requirements for an area variance then.

MR. FENWICK: Give them to him now, it's something you can think about you're going to be here at least two more meetings and you'll have to give some thought to this and if you want to make some notes it might be to your advantage to do that.

MR. LUCIA: Since you're applying for a number of area variances, the legal standard on all of them is something called practical difficulty so you must show this Board why it is you suffer significant economic injury from the application of the ordinance to your land or the specific bulk areas of the ordinance to your land, why it is it is costing you money in dollars and cents that you can't have the pool, the deck that you have there right now. Also, if there's also any alternative way of doing it, could you feasibly put the pool and deck someplace else on the property that would require either a smaller variance or no variance. As the Chairman said, I'd like to see a copy of your deed, title policy and some photographs of the property when you come back.

MR. DI GISCO: Just the back sir?

MR. LUCIA: I think that is all is relevant. Bring a couple of street views also.

MR. DI GISCO: From the edge of the driveway?

MR. FENWICK: Yes.

MR. LUCIA: Also, when you finally do submit the application, we'd need two checks, both to the Town of New Windsor, one for the \$50 application fee and the second for a \$250 deposit against town consultant fees, publication costs, and miscellaneous expenses that the town incurs on your area variance application. And that covers it.

MR. DI GISCO: Practical difficult is my --

MR. LUCIA: Legal standard that is what you need to establish for this Board to give you the relief you're seeking.

MR. DI GISCO: Copy of the deed, the title policy, photographs from the street back, whole business and we'll get this survey.

MR. LUCIA: We're going to need the numbers so either a surveyor or have a surveyor engineer do those for you so the Board has firm numbers on which to give you a variance.

MR. DI GISCO: \$50 and \$250 check both to the Town of New Windsor?

MR. LUCIA: Correct.

MR. DI GISCO: I'd just like to ask one question. My wife is going to ask me this question; so, I'd just as soon as get a good answer. Are we in trouble?

MR. FENWICK: You have done the right thing, you have done what the law says and you're doing that, we're not going to cut your deck down, we're not going to, we haven't made any decisions. I cannot tell you that this Board will make any decisions or what we're going to decide.

MR. DI GISCO: I don't have to worry about my electricity or water being cutoff?

MR. LUCIA: No, no. What happens it's called existing, your remedies before you have an action against anybody if there was some wrong doing you need to have taken every step to clear the objections before you can go against them. So, one way or the other you need to go through the mechanics here. You mentioned that somebody's structure was within an arms length, if that was a problem, show it in the photographs that might be additional evidence. We're not going to pick on them and you're not blowing the whistle on them. You're stating your own case. That's all.

MR. DI GISCO: Okay, thank you.